

1 **TITLE I—FACILITATING AFFILI-**
2 **ATION AMONG BANKS, SECUR-**
3 **ITIES FIRMS, AND INSUR-**
4 **ANCE COMPANIES**

5 **Subtitle A—Affiliations**

6 **SEC. 101. GLASS-STEAGALL ACT REPEALED.**

7 (a) SECTION 20 REPEALED.—Section 20 of the
8 Banking Act of 1933 (12 U.S.C. 377) (commonly referred
9 to as the “Glass-Steagall Act”) is repealed.

10 (b) SECTION 32 REPEALED.—Section 32 of the
11 Banking Act of 1933 (12 U.S.C. 78) is repealed.

12 **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK**
13 **HOLDING COMPANIES WHICH ARE NOT FI-**
14 **NANCIAL HOLDING COMPANIES.**

15 (a) IN GENERAL.—Section 4(c)(8) of the Bank Hold-
16 ing Company Act of 1956 (12 U.S.C. 1843(c)(8)) is
17 amended to read as follows:

18 “(8) shares of any company the activities of
19 which had been determined by the Board by regula-
20 tion or order under this paragraph as of the day be-
21 fore the date of the enactment of the Financial Serv-
22 ices Modernization Act of 1999, to be so closely re-
23 lated to banking as to be a proper incident thereto
24 (subject to such terms and conditions contained in

1 such regulation or order, unless modified by the
2 Board);”.

3 (b) CONFORMING CHANGES TO OTHER STATUTES.—

4 (1) AMENDMENT TO THE BANK HOLDING COM-
5 PANY ACT AMENDMENTS OF 1970.—Section 105 of
6 the Bank Holding Company Act Amendments of
7 1970 (12 U.S.C. 1850) is amended by striking “, to
8 engage directly or indirectly in a nonbanking activity
9 pursuant to section 4 of such Act,”.

10 (2) AMENDMENT TO THE BANK SERVICE COM-
11 PANY ACT.—Section 4(f) of the Bank Service Com-
12 pany Act (12 U.S.C. 1864(f)) is amended by insert-
13 ing before the period at the end the following: “as
14 of the day before the date of the enactment of the
15 Financial Services Modernization Act of 1999”.

16 **SEC. 103. FINANCIAL ACTIVITIES.**

17 (a) IN GENERAL.—Section 4 of the Bank Holding
18 Company Act of 1956 (12 U.S.C. 1843) is amended by
19 adding at the end the following new subsections:

20 “(k) ENGAGING IN ACTIVITIES THAT ARE FINAN-
21 CIAL IN NATURE.—

22 “(1) IN GENERAL.—Notwithstanding subsection
23 (a), a financial holding company may engage in any
24 activity, and may acquire and retain the shares of
25 any company engaged in any activity, that the

1 Board, in accordance with paragraph (2), determines
2 (by regulation or order)—

3 “(A) to be financial in nature or incidental
4 to such financial activities; or

5 “(B) is complementary to financial activi-
6 ties and does not pose a substantial risk to the
7 safety or soundness of depository institutions or
8 the financial system generally.

9 “(2) COORDINATION BETWEEN THE BOARD
10 AND THE SECRETARY OF THE TREASURY.—

11 “(A) PROPOSALS RAISED BEFORE THE
12 BOARD.—

13 “(i) CONSULTATION.—The Board
14 shall notify the Secretary of the Treasury
15 of, and consult with the Secretary of the
16 Treasury concerning, any request, pro-
17 posal, or application under this subsection
18 for a determination of whether an activity
19 is financial in nature or incidental to such
20 a financial activity.

21 “(ii) TREASURY VIEW.—The Board
22 shall not determine that any activity is fi-
23 nancial in nature or incidental to a finan-
24 cial activity under this subsection if the
25 Secretary of the Treasury notifies the

1 Board in writing, not later than 30 days
2 after the date of receipt of the notice de-
3 scribed in clause (i) (or such longer period
4 as the Board determines to be appropriate
5 in light of the circumstances) that the Sec-
6 retary of the Treasury believes that the ac-
7 tivity is not financial in nature or inci-
8 dental to a financial activity.

9 “(B) PROPOSALS RAISED BY THE TREAS-
10 URY.—

11 “(i) TREASURY RECOMMENDATION.—
12 The Secretary of the Treasury may, at any
13 time, recommend in writing that the Board
14 find an activity to be financial in nature or
15 incidental to a financial activity.

16 “(ii) TIME PERIOD FOR BOARD AC-
17 TION.—Not later than 30 days after the
18 date of receipt of a written recommenda-
19 tion from the Secretary of the Treasury
20 under clause (i) (or such longer period as
21 the Secretary of the Treasury and the
22 Board determine to be appropriate in light
23 of the circumstances), the Board shall de-
24 termine whether to initiate a public rule-
25 making proposing that the subject rec-

1 ommended activity be found to be financial
2 in nature or incidental to a financial activ-
3 ity under this subsection, and shall notify
4 the Secretary of the Treasury in writing of
5 the determination of the Board and, in the
6 event that the Board determines not to
7 seek public comment on the proposal, the
8 reasons for that determination.

9 “(3) FACTORS TO BE CONSIDERED.—In deter-
10 mining whether an activity is financial in nature or
11 incidental to financial activities, the Board shall take
12 into account—

13 “(A) the purposes of this Act and the Fi-
14 nancial Services Modernization Act of 1999;

15 “(B) changes or reasonably expected
16 changes in the marketplace in which bank hold-
17 ing companies compete;

18 “(C) changes or reasonably expected
19 changes in the technology for delivering finan-
20 cial services; and

21 “(D) whether such activity is necessary or
22 appropriate to allow a bank holding company
23 and the affiliates of a bank holding company
24 to—

1 “(i) compete effectively with any com-
2 pany seeking to provide financial services
3 in the United States;

4 “(ii) efficiently deliver information
5 and services that are financial in nature
6 through the use of technological means, in-
7 cluding any application necessary to pro-
8 tect the security or efficacy of systems for
9 the transmission of data or financial trans-
10 actions; and

11 “(iii) offer customers any available or
12 emerging technological means for using fi-
13 nancial services.

14 “(4) ACTIVITIES THAT ARE FINANCIAL IN NA-
15 TURE.—For purposes of this subsection, the fol-
16 lowing activities shall be considered to be financial
17 in nature:

18 “(A) Lending, exchanging, transferring, in-
19 vesting for others, or safeguarding money or se-
20 curities.

21 “(B) Insuring, guaranteeing, or indem-
22 nifying against loss, harm, damage, illness, dis-
23 ability, or death, or providing and issuing annu-
24 ities, and acting as principal, agent, or broker
25 for purposes of the foregoing, in any State.

1 “(C) Providing financial, investment, or
2 economic advisory services, including advising
3 an investment company (as defined in section 3
4 of the Investment Company Act of 1940).

5 “(D) Issuing or selling instruments rep-
6 resenting interests in pools of assets permissible
7 for a bank to hold directly.

8 “(E) Underwriting, dealing in, or making
9 a market in securities.

10 “(F) Engaging in any activity that the
11 Board has determined, by order or regulation
12 that is in effect on the date of the enactment
13 of the Financial Services Modernization Act of
14 1999, to be so closely related to banking or
15 managing or controlling banks as to be a proper
16 incident thereto (subject to the same terms and
17 conditions contained in such order or regula-
18 tion, unless modified by the Board).

19 “(G) Engaging, in the United States, in
20 any activity that—

21 “(i) a bank holding company may en-
22 gage in outside of the United States; and

23 “(ii) the Board has determined, under
24 regulations issued pursuant to subsection
25 (c)(13) (as in effect on the day before the

1 date of the enactment of the Financial
2 Services Modernization Act of 1999) to be
3 usual in connection with the transaction of
4 banking or other financial operations
5 abroad.

6 “(H) Directly or indirectly acquiring or
7 controlling, whether as principal, on behalf of 1
8 or more entities (including entities other than a
9 depository institution or subsidiary of a deposi-
10 tory institution that the bank holding company
11 controls), or otherwise, shares, assets, or owner-
12 ship interests (including debt or equity securi-
13 ties, partnership interests, trust certificates, or
14 other instruments representing ownership) of a
15 company or other entity, whether or not consti-
16 tuting control of such company or entity, en-
17 gaged in any activity not authorized pursuant
18 to this section if—

19 “(i) the shares, assets, or ownership
20 interests are not acquired or held by a de-
21 pository institution or subsidiary of a de-
22 pository institution;

23 “(ii) such shares, assets, or ownership
24 interests are acquired and held by—

1 (I) a securities affiliate or an af-
2 filiate thereof; or

3 (II) an affiliate of an insurance
4 company described in subparagraph
5 (I)(ii) that provides investment advice
6 to an insurance company and is reg-
7 istered pursuant to the Investment
8 Advisers Act of 1940, or an affiliate
9 of such investment adviser,
10 as part of a bona fide underwriting or mer-
11 chant banking activity, including invest-
12 ment activities engaged in for the purpose
13 of appreciation and ultimate resale or dis-
14 position of the investment;

15 “(iii) such shares, assets, or owner-
16 ship interests are held for a period of time
17 to enable the sale or disposition thereof on
18 a reasonable basis consistent with the fi-
19 nancial viability of the activities described
20 in clause (ii); and

21 “(iv) during the period such shares,
22 assets, or ownership interests are held, the
23 bank holding company does not routinely
24 manage or operate such company or entity
25 except as may be necessary or required to

1 obtain a reasonable return on investment
2 upon resale or disposition.

3 “(I) Directly or indirectly acquiring or con-
4 trolling, whether as principal, on behalf of one
5 or more entities (including entities other than a
6 depository institution or subsidiary of a depository
7 institution that the bank holding company
8 controls) or otherwise, shares, assets, or owner-
9 ship interests (including without limitation debt
10 or equity securities, partnership interests, trust
11 certificates or other instruments representing
12 ownership) of a company or other entity, wheth-
13 er or not constituting control of such company
14 or entity, engaged in any activity not authorized
15 pursuant to this section if—

16 “(i) the shares, assets, or ownership
17 interests are not acquired or held by a de-
18 pository institution or a subsidiary of a de-
19 pository institution;

20 “(ii) such shares, assets, or ownership
21 interests are acquired and held by an in-
22 surance company that is predominantly en-
23 gaged in underwriting life, accident and
24 health, or property and casualty insurance

1 (other than credit-related insurance) or
2 providing and issuing annuities;

3 “(iii) such shares, assets, or owner-
4 ship interests represent an investment
5 made in the ordinary course of business of
6 such insurance company in accordance
7 with relevant State law governing such in-
8 vestments; and

9 “(iv) during the period such shares,
10 assets, or ownership interests are held, the
11 bank holding company does not routinely
12 manage or operate such company except as
13 may be necessary or required to obtain a
14 reasonable return on investment upon re-
15 sale or disposition.

16 “(5) ACTIONS REQUIRED.—

17 “(A) IN GENERAL.—The Board shall, by
18 regulation or order, define, consistent with the
19 purposes of this Act, the activities described in
20 subparagraph (B) as financial in nature, and
21 the extent to which such activities are financial
22 in nature or incidental to activities that are fi-
23 nancial in nature.

24 “(B) ACTIVITIES.—The activities described
25 in this subparagraph are as follows:

1 “(i) Lending, exchanging, transfer-
2 ring, investing for others, or safeguarding
3 financial assets other than money or secu-
4 rities.

5 “(ii) Providing any device or other in-
6 strumentality for transferring money or
7 other financial assets.

8 “(iii) Arranging, effecting, or facili-
9 tating financial transactions for the ac-
10 count of third parties.

11 “(6) REQUIRED NOTIFICATION.—

12 “(A) IN GENERAL.—A financial holding
13 company that acquires any company or com-
14 mences any activity pursuant to this subsection
15 shall provide written notice to the Board de-
16 scribing the activity commenced or conducted
17 by the company acquired not later than 30 cal-
18 endar days after commencing the activity or
19 consummating the acquisition, as applicable.

20 “(B) APPROVAL NOT REQUIRED FOR CER-
21 TAIN FINANCIAL ACTIVITIES.—Except as pro-
22 vided in subsection (j) with regard to the acqui-
23 sition of a savings association, a financial hold-
24 ing company may commence any activity, or ac-
25 quire any company, pursuant to paragraph (4)

1 or any regulation prescribed or order issued
2 under paragraph (5), without prior approval of
3 the Board.

4 “(l) CONDITIONS FOR ENGAGING IN EXPANDED FI-
5 NANCIAL ACTIVITIES.—

6 “(1) IN GENERAL.—Notwithstanding sub-
7 sections (k), (n), and (o), a bank holding company
8 may not engage in any activity, or directly or indi-
9 rectly acquire or retain shares of any company en-
10 gaged in any activity, under subsection (k), (n), or
11 (o), other than activities permissible for any bank
12 holding company under subsection (c)(8), unless—

13 “(A) all of the insured depository institu-
14 tion subsidiaries of the bank holding company
15 are well capitalized;

16 “(B) all of the insured depository institu-
17 tion subsidiaries of the bank holding company
18 are well managed; and

19 “(C) the bank holding company has filed
20 with the Board—

21 “(i) a declaration that the company
22 elects to be a financial holding company to
23 engage in activities or acquire and retain
24 shares of a company which were not per-
25 missible for a bank holding company to en-

1 gage in or acquire before the enactment of
2 the Financial Services Modernization Act
3 of 1999; and

4 “(ii) a certification that the company
5 meets the requirements of subparagraphs
6 (A) and (B).

7 “(2) FOREIGN BANKS.—For purposes of para-
8 graph (1), the Board shall apply comparable capital
9 and management standards to a foreign bank that
10 operates a branch or agency or owns or controls a
11 commercial lending company in the United States,
12 giving due regard to the principle of national treat-
13 ment and equality of competitive opportunity.

14 “(m) PROVISIONS APPLICABLE TO BANK HOLDING
15 COMPANIES THAT FAIL TO MEET CERTAIN REQUIRE-
16 MENTS.—

17 “(1) IN GENERAL.—If the Board finds that—

18 “(A) a financial holding company is en-
19 gaged, directly or indirectly, in any activity
20 under subsection (k), (n), or (o), other than ac-
21 tivities that are permissible for a bank holding
22 company under subsection (c)(8); and

23 “(B) such financial holding company is not
24 in compliance with the requirements of sub-
25 section (l),

1 the Board shall give notice to the financial holding
2 company to that effect, describing the conditions giv-
3 ing rise to the notice.

4 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
5 QUIRED.—Not later than 45 days after the date of
6 receipt by a financial holding company of a notice
7 given under paragraph (1) (or such additional period
8 as the Board may permit), the financial holding
9 company shall execute an agreement with the Board
10 to comply with the requirements applicable to a fi-
11 nancial holding company under subsection (l).

12 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until
13 the conditions described in a notice to a financial
14 holding company under paragraph (1) are corrected,
15 the Board may impose such limitations on the con-
16 duct or activities of that financial holding company
17 or any affiliate of that company as the Board deter-
18 mines to be appropriate under the circumstances
19 and consistent with the purposes of this Act.

20 “(4) FAILURE TO CORRECT.—If the conditions
21 described in a notice to a financial holding company
22 under paragraph (1) are not corrected within 180
23 days after the date of receipt by the financial hold-
24 ing company of a notice under paragraph (1), the
25 Board may require such financial holding company,

1 under such terms and conditions as may be imposed
2 by the Board and subject to such extension of time
3 as may be granted in the discretion of the Board,
4 either—

5 “(A) to divest control of any subsidiary in-
6 sured depository institutions; or

7 “(B) at the election of the financial hold-
8 ing company instead to cease to engage in any
9 activity conducted by such financial holding
10 company or its subsidiaries (other than a depos-
11 itory institution or a subsidiary of a depository
12 institution) that is not an activity that is per-
13 missible for a financial holding company under
14 subsection (c)(8).

15 “(5) CONSULTATION.—In taking any action
16 under this subsection, the Board shall consult with
17 all relevant Federal and State regulatory agencies.

18 “(n) AUTHORITY TO RETAIN LIMITED NON-
19 FINANCIAL ACTIVITIES AND AFFILIATIONS.—

20 “(1) IN GENERAL.—Notwithstanding subsection
21 (a), a company that is not a bank holding company
22 or a foreign bank (as defined in section 1(b)(7) of
23 the International Banking Act of 1978) and becomes
24 a financial holding company after the date of the en-
25 actment of the Financial Services Modernization Act

1 of 1999 may continue to engage in any activity and
2 retain direct or indirect ownership or control of
3 shares of a company engaged in any activity if—

4 “(A) the holding company lawfully was en-
5 gaged in the activity or held the shares of such
6 company on September 30, 1999;

7 “(B) the holding company is predomi-
8 nantly engaged in financial activities as defined
9 in paragraph (2); and

10 “(C) the company engaged in such activity
11 continues to engage only in the same activities
12 that such company conducted on September 30,
13 1999, and other activities permissible under
14 this Act.

15 “(2) PREDOMINANTLY FINANCIAL.—For pur-
16 poses of this subsection, a company is predominantly
17 engaged in financial activities if the annual gross
18 revenues derived by the holding company and all
19 subsidiaries of the holding company (excluding reve-
20 nues derived from subsidiary depository institu-
21 tions), on a consolidated basis, from engaging in ac-
22 tivities that are financial in nature or are incidental
23 to activities that are financial in nature under sub-
24 section (k) represent at least 85 percent of the con-
25 solidated annual gross revenues of the company.

1 “(3) NO EXPANSION OF GRANDFATHERED COM-
2 MERCIAL ACTIVITIES THROUGH MERGER OR CON-
3 SOLIDATION.—A financial holding company that en-
4 gages in activities or holds shares pursuant to this
5 subsection, or a subsidiary of such financial holding
6 company, may not acquire, in any merger, consolida-
7 tion, or other type of business combination, assets of
8 any other company which is engaged in any activity
9 which the Board has not determined to be financial
10 in nature or incidental to activities that are financial
11 in nature under subsection (k), except this para-
12 graph shall not apply with respect to a company that
13 owns a broadcasting station licensed under title III
14 of the Communications Act of 1934 and the shares
15 of which are under common control with an insur-
16 ance company since January 1, 1998, unless such
17 company is acquired by, or otherwise becomes an af-
18 filiate of, a bank holding company which, at the time
19 such acquisition or affiliation is consummated, is one
20 of the 10 largest domestic bank holding companies
21 (as determined on the basis of the consolidated total
22 assets of such companies).

23 “(4) CONTINUING REVENUE LIMITATION ON
24 GRANDFATHERED COMMERCIAL ACTIVITIES.—Not-
25 withstanding any other provision of this subsection,

1 a financial holding company may continue to engage
2 in activities or hold shares in companies pursuant to
3 this subsection only to the extent that the aggregate
4 annual gross revenues derived from all such activi-
5 ties and all such companies does not exceed 15 per-
6 cent of the consolidated annual gross revenues of the
7 financial holding company (excluding revenues de-
8 rived from subsidiary insured depository institu-
9 tions).

10 “(5) CROSS MARKETING RESTRICTIONS APPLI-
11 CABLE TO COMMERCIAL ACTIVITIES.—An insured
12 depository institution controlled by a financial hold-
13 ing company shall not—

14 “(A) offer or market, directly or through
15 any arrangement, any product or service of a
16 company whose activities are conducted or
17 whose shares are owned or controlled by the fi-
18 nancial holding company pursuant to this sub-
19 section or subparagraph (H) or (I) of sub-
20 section (k)(4); or

21 “(B) permit any of its products or services
22 to be offered or marketed, directly or through
23 any arrangement, by or through any company
24 described in subparagraph (A).

1 “(6) TRANSACTIONS WITH NONFINANCIAL AF-
2 FILIATES.—An insured depository institution con-
3 trolled by a financial holding company may not en-
4 gage in a covered transaction (as defined by section
5 23A(b)(7) of the Federal Reserve Act) with any af-
6 filiate controlled by the company pursuant to this
7 subsection.

8 “(7) SUNSET OF GRANDFATHER.—A financial
9 holding company engaged in any activity, or retain-
10 ing direct or indirect ownership or control of shares
11 of a company, pursuant to this subsection, shall ter-
12 minate such activity and divest ownership or control
13 of the shares of such company before the end of the
14 10-year period beginning on the date of the enact-
15 ment of the Financial Services Modernization Act of
16 1999. The Board may, upon application by a finan-
17 cial holding company, extend such 10-year period by
18 a period not to exceed an additional 5 years if such
19 extension would not be detrimental to the public in-
20 terest.

21 “(o) DEVELOPING ACTIVITIES.—A financial holding
22 company may engage directly or indirectly, or acquire
23 shares of any company engaged, in any activity that the
24 Board has not determined to be financial in nature or inci-
25 dental to financial activities under subsection (k) if—

1 “(1) the holding company reasonably concludes
2 that the activity is financial in nature or incidental
3 to financial activities;

4 “(2) the gross revenues from all activities con-
5 ducted under this subsection represent less than 5
6 percent of the consolidated gross revenues of the
7 holding company;

8 “(3) the aggregate total assets of all companies
9 the shares of which are held under this subsection
10 do not exceed 5 percent of the holding company’s
11 consolidated total assets;

12 “(4) the total capital invested in activities con-
13 ducted under this subsection represents less than 5
14 percent of the consolidated total capital of the hold-
15 ing company;

16 “(5) the Board has not determined that the ac-
17 tivity is not financial in nature or incidental to fi-
18 nancial activities under subsection (k);

19 “(6) the holding company is not required to
20 provide prior written notice of the transaction to the
21 Board under subsection (k)(6); and

22 “(7) the holding company provides written noti-
23 fication to the Board describing the activity com-
24 menced or conducted by the company acquired not

1 later than 10 business days after commencing the
2 activity or consummating the acquisition.”.

3 (b) COMMUNITY REINVESTMENT REQUIREMENT.—
4 Section 804 of the Community Reinvestment Act of 1977
5 (12 U.S.C. 2903) is amended by adding at the end the
6 following new subsection:

7 “(c) FINANCIAL HOLDING COMPANY REQUIRE-
8 MENT.—

9 “(1) IN GENERAL.—An election by a bank hold-
10 ing company to become a financial holding company
11 under section 4 of the Bank Holding Company Act
12 of 1956 shall not be effective if—

13 “(A) the Board finds that, as of the date
14 the declaration of such election and the certifi-
15 cation is filed by such holding company under
16 section 4(l)(1)(C) of the Bank Holding Com-
17 pany Act of 1956, not all of the subsidiary in-
18 sured depository institutions of the bank hold-
19 ing company had achieved a rating of ‘satisfac-
20 tory record of meeting community credit needs’,
21 or better, at the most recent examination of
22 each such institution; and

23 “(B) the Board notifies the company of
24 such finding before the end of the 30-day pe-
25 riod beginning on such date.

1 “(2) LIMITED EXCLUSIONS FOR NEWLY AC-
2 QUIRED INSURED DEPOSITORY INSTITUTIONS.—Any
3 insured depository institution acquired by a bank
4 holding company during the 12-month period pre-
5 ceding the date of the submission to the Board of
6 the declaration and certification under section
7 4(l)(1)(C) of the Bank Holding Company Act of
8 1956 and any insured depository institution acquired
9 after the submission of such notice may be excluded
10 for purposes of paragraph (1) during the 12-month
11 period beginning on the date of such acquisition if—

12 “(A) the bank holding company has sub-
13 mitted an affirmative plan to the appropriate
14 Federal financial supervisory agency to take
15 such action as may be necessary in order for
16 such institution to achieve a rating of ‘satisfac-
17 tory record of meeting community credit needs’,
18 or better, at the next examination of the insti-
19 tution; and

20 “(B) the plan has been accepted by such
21 agency.

22 “(3) DEFINITIONS.—For purposes of this sub-
23 section, the following definitions shall apply:

24 “(A) BANK HOLDING COMPANY; FINANCIAL
25 HOLDING COMPANY.—The terms ‘bank holding

1 company' and 'financial holding company' have
2 the meanings given to such terms in section 2
3 of the Bank Holding Company Act of 1956.

4 “(B) BOARD.—The term ‘Board’ means
5 the Board of Governors of the Federal Reserve
6 System.

7 “(C) INSURED DEPOSITORY INSTITU-
8 TION.—The term ‘insured depository institu-
9 tion’ has the meaning given to such term in sec-
10 tion 3(c) of the Federal Deposit Insurance
11 Act.”.

12 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

13 (1) DEFINITIONS.—Section 2 of the Bank
14 Holding Company Act of 1956 (12 U.S.C. 1841) is
15 amended by adding at the end the following new
16 subsections:

17 “(p) FINANCIAL HOLDING COMPANY.—The term ‘fi-
18 nancial holding company’ means a bank holding company
19 which meets the requirements of section 4(l).

20 “(q) INSURANCE COMPANY.—For purposes of sec-
21 tions 4 and 5, the term ‘insurance company’ includes any
22 person engaged in the business of insurance to the extent
23 of such activities.

24 “(r) APPROPRIATE FEDERAL BANKING AGENCY AND
25 DEPOSITORY INSTITUTION.—The terms ‘appropriate Fed-

1 eral banking agency’ and ‘depository institution’ have the
2 same meanings as in section 3 of the Federal Deposit In-
3 surance Act.”.

4 (2) NOTICE PROCEDURES.—Section 4(j) of the
5 Bank Holding Company Act of 1956 (12 U.S.C.
6 1843(j)) is amended—

7 (A) in paragraph (1)(A), by inserting “or
8 in any complementary activity under section
9 subsection (k)(1)(B)” after “subsection (c)(8)
10 or (a)(2)”;

11 (B) in paragraph (3)—

12 (i) by inserting “, other than any
13 complementary activity under subsection
14 (k)(1)(B),” after “to engage in any activ-
15 ity”;

16 (ii) by inserting “or a company en-
17 gaged in any complementary activity under
18 subsection (k)(1)(B)” after “insured de-
19 pository institution”.

20 (c) REPORT.—

21 (1) IN GENERAL.—By the end of the 4-year pe-
22 riod beginning on the date of the enactment of this
23 Act, the Board of Governors of the Federal Reserve
24 System and the Secretary of the Treasury shall sub-
25 mit a joint report to the Congress containing a sum-

1 mary of new activities which are financial in nature,
2 including grandfathered commercial activities, in
3 which any financial holding company is engaged pur-
4 suant to subsection (k)(1) or (n) of section 4 of the
5 Bank Holding Company Act of 1956 (as added by
6 subsection (a)).

7 (2) OTHER CONTENTS.—The report submitted
8 to the Congress pursuant to paragraph (1) shall also
9 contain the following:

10 (A) A discussion of actions by the Board
11 of Governors of the Federal Reserve System
12 and the Secretary of the Treasury, whether by
13 regulation, order, interpretation, or guideline or
14 by approval or disapproval of an application,
15 with regard to activities of financial holding
16 companies which are incidental to activities fi-
17 nancial in nature or complementary to such fi-
18 nancial activities.

19 (B) An analysis and discussion of the risks
20 posed by commercial activities of financial hold-
21 ing companies to the safety and soundness of
22 affiliate insured depository institutions.

23 (C) An analysis and discussion of the ef-
24 fect of mergers and acquisitions under section
25 4(k) of the Bank Holding Company Act of

1 1956 on market concentration in the financial
2 services industry.

3 **SEC. 104. OPERATION OF STATE LAW.**

4 (a) STATE REGULATION OF THE BUSINESS OF IN-
5 SURANCE.—The Act entitled “An Act to express the intent
6 of Congress with reference to the regulation of the busi-
7 ness of insurance” and approved March 9, 1945 (15
8 U.S.C. 1011 et seq.), commonly referred to as the
9 “McCarran-Ferguson Act” remains the law of the United
10 States.

11 (b) MANDATORY INSURANCE LICENSING REQUIRE-
12 MENTS.—No person shall engage in the business of insur-
13 ance in a State as principal or agent unless such person
14 is licensed as required by the appropriate insurance regu-
15 lator of such State in accordance with the relevant State
16 insurance law, subject to subsections (c), (d), and (e).

17 (c) AFFILIATIONS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), no State may, by statute, regulation,
20 order, interpretation, or other action, prevent or re-
21 strict an insured depository institution, or an affil-
22 iate thereof, from being affiliated directly or indi-
23 rectly or associated with any person, as authorized
24 or permitted by this Act or any other provision of
25 Federal law.

1 (2) INSURANCE.—With respect to affiliations
2 between insured depository institutions, or any affil-
3 iate thereof, and any insurer, paragraph (1) does not
4 prohibit—

5 (A) any State from—

6 (i) collecting, reviewing, and taking
7 actions (including approval and dis-
8 approval) on applications and other docu-
9 ments or reports concerning any proposed
10 acquisition of, or a change or continuation
11 of control of, an insurer domiciled in that
12 State; and

13 (ii) exercising authority granted under
14 applicable State law to collect information
15 concerning any proposed acquisition of, or
16 a change or continuation of control of, an
17 insurer engaged in the business of insur-
18 ance in, and regulated as an insurer by,
19 such State;

20 during the 60-day period preceding the effective
21 date of the acquisition or change or continu-
22 ation of control, so long as the collecting, re-
23 viewing, taking actions, or exercising authority
24 by the State does not have the effect of dis-
25 criminating, intentionally or unintentionally,

1 against an insured depository institution or an
2 affiliate thereof, or against any other person
3 based upon an association of such person with
4 an insured depository institution;

5 (B) any State from requiring any person
6 that is acquiring control of an insurer domiciled
7 in that State to maintain or restore the capital
8 requirements of that insurer to the level re-
9 quired under the capital regulations of general
10 applicability in that State to avoid the require-
11 ment of preparing and filing with the insurance
12 regulatory authority of that State a plan to in-
13 crease the capital of the insurer, except that
14 any determination by the State insurance regu-
15 latory authority with respect to such require-
16 ment shall be made not later than 60 days after
17 the date of notification under subparagraph
18 (A); or

19 (C) any State from restricting a change in
20 the ownership of stock in an insurer, or a com-
21 pany formed for the purpose of controlling such
22 insurer, after the conversion of the insurer from
23 mutual to stock form so long as such restriction
24 does not have the effect of discriminating, in-
25 tentionally or unintentionally, against an in-

1 sured depository institution or an affiliate
2 thereof, or against any other person based upon
3 an association of such person with an insured
4 depository institution.

5 (d) ACTIVITIES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (3), and except with respect to insurance
8 sales, solicitation, and cross marketing activities,
9 which shall be governed by paragraph (2), no State
10 may, by statute, regulation, order, interpretation or
11 other action, prevent or restrict an insured deposi-
12 tory institution or an affiliate thereof from engaging
13 directly or indirectly, either by itself or in conjunc-
14 tion with an affiliate, or any other person, in any ac-
15 tivity authorized or permitted under this Act and the
16 amendments made by this Act.

17 (2) INSURANCE SALES.—

18 (A) IN GENERAL.—In accordance with the
19 legal standards for preemption set forth in the
20 decision of the Supreme Court of the United
21 States in *Barnett Bank of Marion County N.A.*
22 *v. Nelson*, 517 U.S. 25 (1996), no State may,
23 by statute, regulation, order, interpretation, or
24 other action, prevent or significantly interfere
25 with the ability of an insured depository institu-

tion, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other party, in any insurance sales, solicitation, or cross-marketing activity.

(B) CERTAIN STATE LAWS PRESERVED.—
Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions which are substantially the same as but no more burdensome or restrictive than those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy by an insured depository institution or an affiliate of an insured depository institution, solely because the policy has been issued or underwritten by any person who is not associated with such insured depository institution or affiliate when the insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insur-

1 ance that is required in connection with a
2 loan or other extension of credit or the
3 provision of another traditional banking
4 product by an insured depository institu-
5 tion, or any affiliate of an insured deposi-
6 tory institution, unless such charge would
7 be required when the insured depository
8 institution or affiliate is the licensed insur-
9 ance agent or broker providing the insur-
10 ance.

11 (iii) Restrictions prohibiting the use of
12 any advertisement or other insurance pro-
13 motional material by an insured depository
14 institution or any affiliate of an insured
15 depository institution that would cause a
16 reasonable person to believe mistakenly
17 that—

18 (I) a State or the Federal Gov-
19 ernment is responsible for the insur-
20 ance sales activities of, or stands be-
21 hind the credit of, the institution, af-
22 filiate, or subsidiary; or

23 (II) a State, or the Federal Gov-
24 ernment guarantees any returns on
25 insurance products, or is a source of

1 payment on any insurance obligation
2 of or sold by the institution or affil-
3 iate;

4 (iv) Restrictions prohibiting the pay-
5 ment or receipt of any commission or bro-
6 kerage fee or other valuable consideration
7 for services as an insurance agent or
8 broker to or by any person, unless such
9 person holds a valid State license regard-
10 ing the applicable class of insurance at the
11 time at which the services are performed,
12 except that, in this clause, the term “serv-
13 ices as an insurance agent or broker” does
14 not include a referral by an unlicensed per-
15 son of a customer or potential customer to
16 a licensed insurance agent or broker that
17 does not include a discussion of specific in-
18 surance policy terms and conditions.

19 (v) Restrictions prohibiting any com-
20 pensation paid to or received by any indi-
21 vidual who is not licensed to sell insurance,
22 for the referral of a customer that seeks to
23 purchase, or seeks an opinion or advice on,
24 any insurance product to a person that
25 sells or provides opinions or advice on such

1 product, based on the purchase of insur-
2 ance by the customer.

3 (vi) Restrictions prohibiting the re-
4 lease of the insurance information of a cus-
5 tomer (defined as information concerning
6 the premiums, terms, and conditions of in-
7 surance coverage, including expiration
8 dates and rates, and insurance claims of a
9 customer contained in the records of the
10 insured depository institution or an affil-
11 iate thereof) to any person other than an
12 officer, director, employee, agent, or affil-
13 iate of an insured depository institution,
14 for the purpose of soliciting or selling in-
15 surance, without the express consent of the
16 customer, other than a provision that
17 prohibits—

18 (I) a transfer of insurance infor-
19 mation to an unaffiliated insurer in
20 connection with transferring insurance
21 in force on existing insureds of the in-
22 sured depository institution or an af-
23 filiate thereof, or in connection with a
24 merger with or acquisition of an unaf-
25 filiated insurer; or

1 (II) the release of information as
2 otherwise authorized by State or Fed-
3 eral law.

4 (vii) Restrictions prohibiting the use
5 of health information obtained from the in-
6 surance records of a customer for any pur-
7 pose, other than for its activities as a li-
8 censed agent or broker, without the ex-
9 press consent of the customer.

10 (viii) Restrictions prohibiting the ex-
11 tension of credit or any product or service
12 that is equivalent to an extension of credit,
13 lease or sale of property of any kind, or
14 furnishing of any services or fixing or vary-
15 ing the consideration for any of the fore-
16 going, on the condition or requirement that
17 the customer obtain insurance from an in-
18 sured depository institution or an affiliate
19 of an insured depository institution, or a
20 particular insurer, agent, or broker, other
21 than a prohibition that would prevent any
22 such insured depository institution or
23 affiliate—

24 (I) from engaging in any activity
25 described in this clause that would not

1 violate section 106 of the Bank Hold-
2 ing Company Act Amendments of
3 1970, as interpreted by the Board of
4 Governors of the Federal Reserve Sys-
5 tem; or

6 (II) from informing a customer
7 or prospective customer that insur-
8 ance is required in order to obtain a
9 loan or credit, that loan or credit ap-
10 proval is contingent upon the procure-
11 ment by the customer of acceptable
12 insurance, or that insurance is avail-
13 able from the insured depository insti-
14 tution or an affiliate of the insured
15 depository institution.

16 (ix) Restrictions requiring, when an
17 application by a consumer for a loan or
18 other extension of credit from an insured
19 depository institution is pending, and in-
20 surance is offered or sold to the consumer
21 or is required in connection with the loan
22 or extension of credit by the insured depos-
23 itory institution or any affiliate thereof,
24 that a written disclosure be provided to the
25 consumer or prospective customer indi-

1 cating that the customer's choice of an in-
2 surance provider will not affect the credit
3 decision or credit terms in any way, except
4 that the insured depository institution may
5 impose reasonable requirements concerning
6 the creditworthiness of the insurer and
7 scope of coverage chosen.

8 (x) Restrictions requiring clear and
9 conspicuous disclosure, in writing, where
10 practicable, to the customer prior to the
11 sale of any insurance policy that such
12 policy—

13 (I) is not a deposit;

14 (II) is not insured by the Federal
15 Deposit Insurance Corporation;

16 (III) is not guaranteed by any in-
17 sured depository institution or, if ap-
18 propriate, an affiliate of any such in-
19 stitution or any person soliciting the
20 purchase of or selling insurance on
21 the premises thereof; and

22 (IV) where appropriate, involves
23 investment risk, including potential
24 loss of principal.

1 (xi) Restrictions requiring that, when
2 a customer obtains insurance (other than
3 credit insurance or flood insurance) and
4 credit from an insured depository institu-
5 tion, or any affiliate of such institution, or
6 any person soliciting the purchase of or
7 selling insurance on the premises thereof,
8 the credit and insurance transactions be
9 completed through separate documents.

10 (xii) Restrictions prohibiting, when a
11 customer obtains insurance (other than
12 credit insurance or flood insurance) and
13 credit from an insured depository institu-
14 tion or an affiliate of such institution, or
15 any person soliciting the purchase of or
16 selling insurance on the premises thereof,
17 inclusion of the expense of insurance pre-
18 miums in the primary credit transaction
19 without the express written consent of the
20 customer.

21 (xiii) Restrictions requiring mainte-
22 nance of separate and distinct books and
23 records relating to insurance transactions,
24 including all files relating to and reflecting
25 consumer complaints, and requiring that

1 such insurance books and records be made
2 available to the appropriate State insur-
3 ance regulator for inspection upon reason-
4 able notice.

5 (C) LIMITATIONS.—

6 (i) OCC DEFERENCE.—Section 304(e)
7 does not apply with respect to any State
8 statute, regulation, order, interpretation,
9 or other action regarding insurance sales,
10 solicitation, or cross marketing activities
11 described in subparagraph (A) that was
12 issued, adopted, or enacted before Sep-
13 tember 3, 1998, and that is not described
14 in subparagraph (B).

15 (ii) NONDISCRIMINATION.—Subsection
16 (e) does not apply with respect to any
17 State statute, regulation, order, interpreta-
18 tion, or other action regarding insurance
19 sales, solicitation, or cross marketing ac-
20 tivities described in subparagraph (A) that
21 was issued, adopted, or enacted before
22 September 3, 1998, and that is not de-
23 scribed in subparagraph (B).

24 (iii) CONSTRUCTION.—Nothing in this
25 paragraph shall be construed—

1 (I) to limit the applicability of
2 the decision of the Supreme Court in
3 Barnett Bank of Marion County N.A.
4 v. Nelson, 517 U.S. 25 (1996) with
5 respect to any State statute, regula-
6 tion, order, interpretation, or other
7 action that is not referred to or de-
8 scribed in subparagraph (B); or

9 (II) to create any inference with
10 respect to any State statute, regula-
11 tion, order, interpretation, or other
12 action that is not described in sub-
13 paragraph (B).

14 (3) INSURANCE ACTIVITIES OTHER THAN
15 SALES.—State statutes, regulations, interpretations,
16 orders, and other actions shall not be preempted
17 under paragraph (1) to the extent that they—

18 (A) relate to, or are issued, adopted, or en-
19 acted for the purpose of regulating the business
20 of insurance in accordance with the Act of
21 March 9, 1945 (commonly known as the
22 “McCarran-Ferguson Act”);

23 (B) apply only to persons that are not in-
24 sured depository institutions, but that are di-
25 rectly engaged in the business of insurance (ex-

1 cept that they may apply to insured depository
2 institutions engaged in providing savings bank
3 life insurance as principal to the extent of regu-
4 lating such insurance);

5 (C) do not relate to or directly or indirectly
6 regulate insurance sales, solicitations, or cross
7 marketing activities; and

8 (D) are not prohibited under subsection
9 (e).

10 (4) FINANCIAL ACTIVITIES OTHER THAN INSUR-
11 ANCE.—No State statute, regulation, interpretation,
12 order, or other action shall be preempted under
13 paragraph (1) to the extent that—

14 (A) it does not relate to, and is not issued
15 and adopted, or enacted for the purpose of reg-
16 ulating, directly or indirectly, insurance sales,
17 solicitations, or cross marketing activities cov-
18 ered under paragraph (2);

19 (B) it does not relate to, and is not issued
20 and adopted, or enacted for the purpose of reg-
21 ulating, directly or indirectly, the business of in-
22 surance activities other than sales, solicitations,
23 or cross marketing activities, covered under
24 paragraph (3);

1 (C) it does not relate to securities inves-
2 tigations or enforcement actions referred to in
3 subsection (f); and

4 (D) it—

5 (i) does not distinguish by its terms
6 between insured depository institutions,
7 and affiliates thereof, engaged in the activ-
8 ity at issue and other persons engaged in
9 the same activity in a manner that is in
10 any way adverse with respect to the con-
11 duct of the activity by any such insured
12 depository institution or affiliate engaged
13 in the activity at issue;

14 (ii) as interpreted or applied, does not
15 have, and will not have, an impact on de-
16 pository institutions, or affiliates thereof,
17 engaged in the activity at issue, or any
18 person who has an association with any
19 such insured depository institution or affil-
20 iate, that is substantially more adverse
21 than its impact on other persons engaged
22 in the same activity that are not insured
23 depository institutions or affiliates thereof,
24 or persons who do not have an association

1 with any such insured depository institu-
2 tion or affiliate;

3 (iii) does not effectively prevent a de-
4 pository institution or affiliate thereof from
5 engaging in activities authorized or per-
6 mitted by this Act or any other provision
7 of Federal law; and

8 (iv) does not conflict with the intent
9 of this Act generally to permit affiliations
10 that are authorized or permitted by Fed-
11 eral law.

12 (e) NONDISCRIMINATION.—Except as provided in any
13 restrictions described in subsection (d)(2)(B), no State
14 may, by statute, regulation, order, interpretation, or other
15 action, regulate the insurance activities authorized or per-
16 mitted under this Act or any other provision of Federal
17 law of an insured depository institution or wholesale finan-
18 cial institution, or subsidiary or affiliate thereof, to the
19 extent that such statute, regulation, order, interpretation,
20 or other action—

21 (1) distinguishes by its terms between insured
22 depository institutions or wholesale financial institu-
23 tions, or subsidiaries or affiliates thereof, and other
24 persons or entities engaged in such activities, in a
25 manner that is in any way adverse to any such in-

1 sured depository institution or wholesale financial in-
2 stitution, or subsidiary or affiliate thereof;

3 (2) as interpreted or applied, has or will have
4 an impact on depository institutions or wholesale fi-
5 nancial institutions, or subsidiaries or affiliates
6 thereof, that is substantially more adverse than its
7 impact on other persons or entities providing the
8 same products or services or engaged in the same
9 activities that are not insured depository institu-
10 tions, wholesale financial institutions, or subsidiaries
11 or affiliates thereof, or persons or entities affiliated
12 therewith;

13 (3) effectively prevents a depository institution
14 or wholesale financial institution, or subsidiary or af-
15 filiate thereof, from engaging in insurance activities
16 authorized or permitted by this Act or any other
17 provision of Federal law; or

18 (4) conflicts with the intent of this Act gen-
19 erally to permit affiliations that are authorized or
20 permitted by Federal law between insured depository
21 institutions or wholesale financial institutions, or
22 subsidiaries or affiliates thereof, and persons and en-
23 tities engaged in the business of insurance.

24 (f) LIMITATION.—Subsections (c) and (d) shall not
25 be construed to affect—

1 (1) the jurisdiction of the securities commission
2 (or any agency or office performing like functions)
3 of any State, under the laws of such State to inves-
4 tigate and bring enforcement actions, consistent with
5 section 18(c) of the Securities Act of 1933, with re-
6 spect to fraud or deceit or unlawful conduct by any
7 person, in connection with securities or securities
8 transactions; or

9 (2) State laws, regulations, orders, interpreta-
10 tions, or other actions of general applicability relat-
11 ing to the governance of corporations, partnerships,
12 limited liability companies, or other business associa-
13 tions incorporated or formed under the laws of that
14 State or domiciled in that State, or the applicability
15 of the antitrust laws of any State or any State law
16 that is similar to the antitrust laws if such laws, reg-
17 ulations, interpretations, orders, or other actions are
18 not inconsistent with the purposes of this Act to au-
19 thorize or permit certain affiliations and to remove
20 barriers to such affiliations.

21 (g) DEFINITIONS.—For purposes of this section, the
22 following definitions shall apply:

23 (1) AFFILIATE.—The term “affiliate” means
24 any company that controls, is controlled by, or is
25 under common control with another company.

1 (2) ANTITRUST LAWS.—The term “antitrust
2 laws” has the same meaning as in subsection (a) of
3 the first section of the Clayton Act, and includes
4 section 5 of the Federal Trade Commission Act (to
5 the extent that such section 5 relates to unfair
6 methods of competition).

7 (3) INSURED DEPOSITORY INSTITUTION.—The
8 term “insured depository institution”—

9 (A) has the same meaning as in section 3
10 of the Federal Deposit Insurance Act; and

11 (B) includes any foreign bank that main-
12 tains a branch, agency, or commercial lending
13 company in the United States.

14 (4) INSURER.—The term “insurer” means any
15 person engaged in the business of insurance.

16 (5) STATE.—The term “State” means any
17 State of the United States, the District of Columbia,
18 any territory of the United States, Puerto Rico,
19 Guam, American Samoa, the Trust Territory of the
20 Pacific Islands, the Virgin Islands, and the Northern
21 Mariana Islands.

1 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**
2 **IZED.**

3 Section 3(g)(2) of the Bank Holding Company Act
4 of 1956 (12 U.S.C. 1842(g)(2)) is amended to read as
5 follows:

6 “(2) REGULATIONS.—A bank holding company
7 organized as a mutual holding company shall be reg-
8 ulated on terms, and shall be subject to limitations,
9 comparable to those applicable to any other bank
10 holding company.”.

11 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**
12 **FICES.**

13 Section 109(e)(4) of the Riegle-Neal Interstate Bank-
14 ing and Branching Efficiency Act of 1994 (12 U.S.C.
15 1835a(e)(4)) is amended by inserting “and any branch of
16 a bank controlled by an out-of-State bank holding com-
17 pany (as defined in section 2(o)(7) of the Bank Holding
18 Company Act of 1956)” before the period.

19 **SEC. 107. CROSS MARKETING RESTRICTION; LIMITED PUR-**
20 **POSE BANK RELIEF; DIVESTITURE.**

21 (a) CROSS MARKETING RESTRICTION.—Section 4(f)
22 of the Bank Holding Company Act of 1956 (12 U.S.C.
23 1843(f)) is amended by striking paragraph (3).

24 (b) DAYLIGHT OVERDRAFTS.—Section 4(f) of the
25 Bank Holding Company Act of 1956 (12 U.S.C. 1843(f))

1 is amended by inserting after paragraph (2) the following
2 new paragraph:

3 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—

4 For purposes of paragraph (2)(C), an overdraft is
5 described in this paragraph if—

6 “(A) such overdraft results from an inad-
7 vertent computer or accounting error that is be-
8 yond the control of both the bank and the affil-
9 iate;

10 “(B) such overdraft—

11 “(i) is permitted or incurred on behalf
12 of an affiliate that is monitored by, reports
13 to, and is recognized as a primary dealer
14 by the Federal Reserve Bank of New York;
15 and

16 “(ii) is fully secured, as required by
17 the Board, by bonds, notes, or other obli-
18 gations that are direct obligations of the
19 United States or on which the principal
20 and interest are fully guaranteed by the
21 United States or by securities and obliga-
22 tions eligible for settlement on the Federal
23 Reserve book entry system; or

24 “(C) such overdraft—

1 “(i) is permitted or incurred by, or on
2 behalf of, an affiliate in connection with an
3 activity that is financial in nature or inci-
4 dental to financial activities; and

5 “(ii) does not cause the bank to vio-
6 late any provision of section 23A or 23B of
7 the Federal Reserve Act, either directly, in
8 the case of a bank that is a member of the
9 Federal Reserve System, or by virtue of
10 section 18(j) of the Federal Deposit Insur-
11 ance Act, in the case of a bank that is not
12 a member of the Federal Reserve Sys-
13 tem.”.

14 (c) INDUSTRIAL LOAN COMPANIES; AFFILIATE
15 OVERDRAFTS.—Section 2(c)(2)(H) of the Bank Holding
16 Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is
17 amended by inserting before the period at the end “, or
18 that is otherwise permissible for a bank controlled by a
19 company described in section 4(f)(1)”.

20 (d) ACTIVITIES LIMITATIONS.—Section 4(f)(2) of the
21 Bank Holding Company Act of 1956 (12 U.S.C.
22 1843(f)(2)) is amended—

23 (1) by striking “Paragraph (1) shall cease to
24 apply to any company described in such paragraph
25 if—” and inserting “Subject to paragraph (3), a

1 company described in paragraph (1) shall no longer
2 qualify for the exemption provided under that para-
3 graph if—”;

4 (2) in subparagraph (A)—

5 (A) in clause (ii)(IX), by striking “and” at
6 the end;

7 (B) in clause (ii)(X), by inserting “and”
8 after the semicolon;

9 (C) in clause (ii), by inserting after sub-
10 clause (X) the following new subclause:

11 “(XI) assets that are derived
12 from, or incidental to, activities in
13 which institutions described in sub-
14 paragraph (F) or (H) of section
15 2(c)(2) are permitted to engage;” and

16 (D) by striking “or” at the end; and

17 (3) by striking subparagraph (B) and inserting
18 the following:

19 “(B) any bank subsidiary of such
20 company—

21 “(i) accepts demand deposits or de-
22 posits that the depositor may withdraw by
23 check or similar means for payment to
24 third parties; and

1 “(ii) engages in the business of mak-
2 ing commercial loans (except that, for pur-
3 poses of this clause, loans made in the or-
4 dinary course of a credit card operation
5 shall not be treated as commercial loans);
6 or

7 “(C) after the date of the enactment of the
8 Competitive Equality Amendments of 1987, any
9 bank subsidiary of such company permits any
10 overdraft (including any intraday overdraft), or
11 incurs any such overdraft in the account of the
12 bank at a Federal reserve bank, on behalf of an
13 affiliate, other than an overdraft described in
14 paragraph (3).”.

15 (e) DIVESTITURE REQUIREMENT.—Section 4(f)(4) of
16 the Bank Holding Company Act of 1956 (12 U.S.C.
17 1843(f)(4)) is amended to read as follows:

18 “(4) DIVESTITURE IN CASE OF LOSS OF EX-
19 EMPTION.—If any company described in paragraph
20 (1) fails to qualify for the exemption provided under
21 paragraph (1) by operation of paragraph (2), such
22 exemption shall cease to apply to such company and
23 such company shall divest control of each bank it
24 controls before the end of the 180-day period begin-
25 ning on the date on which the company receives no-

1 tice from the Board that the company has failed to
2 continue to qualify for such exemption, unless, be-
3 fore the end of such 180-day period, the company
4 has—

5 “(A) either—

6 “(i) corrected the condition or ceased
7 the activity that caused the company to
8 fail to continue to qualify for the exemp-
9 tion; or

10 “(ii) submitted a plan to the Board
11 for approval to cease the activity or correct
12 the condition in a timely manner (which
13 shall not exceed 1 year); and

14 “(B) implemented procedures that are rea-
15 sonably adapted to avoid the reoccurrence of
16 such condition or activity.”.

17 **SEC. 108. USE OF SUBORDINATED DEBT TO PROTECT FI-**
18 **NANCIAL SYSTEM AND DEPOSIT FUNDS FROM**
19 **“TOO BIG TO FAIL” INSTITUTIONS.**

20 (a) STUDY REQUIRED.—The Board of Governors of
21 the Federal Reserve System shall conduct a study of—

22 (1) the feasibility and appropriateness of estab-
23 lishing a requirement that, with respect to large in-
24 sured depository institutions and depository institu-
25 tion holding companies the failure of which could

1 have serious adverse effects on economic conditions
2 or financial stability, such institutions and holding
3 companies maintain some portion of their capital in
4 the form of subordinated debt in order to bring mar-
5 ket forces and market discipline to bear on the oper-
6 ation of, and the assessment of the viability of, such
7 institutions and companies and reduce the risk to
8 economic conditions, financial stability, and any de-
9 posit insurance fund;

10 (2) if such requirement is feasible and appro-
11 priate, the appropriate amount or percentage of cap-
12 ital which should be subordinated debt consistent
13 with such purposes; and

14 (3) the manner in which any such requirement
15 could be incorporated into existing capital standards
16 and other issues relating to the transition to such a
17 requirement.

18 (b) REPORT.—Before the end of the 18-month period
19 beginning on the date of the enactment of this Act, the
20 Board of Governors of the Federal Reserve System shall
21 submit a report to the Congress containing the findings
22 and conclusions of the Board in connection with the study
23 required under subsection (a), together with such legisla-
24 tive and administrative proposals as the Board may deter-
25 mine to be appropriate.

1 (c) DEFINITIONS.—For purposes of subsection (a),
2 the following definitions shall apply:

3 (1) BANK HOLDING COMPANY.—The term
4 “bank holding company” has the meaning given to
5 such term in section 2 of the Bank Holding Com-
6 pany Act of 1956.

7 (2) INSURED DEPOSITORY INSTITUTION.—The
8 term “insured depository institution” has the mean-
9 ing given to such term in section 3(c) of the Federal
10 Deposit Insurance Act

11 (3) SUBORDINATED DEBT.—The term “subor-
12 dinated debt” means unsecured debt that—

13 (A) has an original weighted average ma-
14 turity of not less than 5 years;

15 (B) is subordinated as to payment of prin-
16 cipal and interest to all other indebtedness of
17 the bank, including deposits;

18 (C) is not supported by any form of credit
19 enhancement, including a guarantee or standby
20 letter of credit; and

21 (D) is not held in whole or in part by any
22 affiliate or institution-affiliated party of the in-
23 sured depository institution or bank holding
24 company.

1 **SEC. 109. STUDY OF FINANCIAL MODERNIZATION'S AFFECT**
2 **ON THE ACCESSIBILITY OF SMALL BUSINESS**
3 **AND FARM LOANS.**

4 (a) STUDY.—The Secretary of the Treasury, in con-
5 sultation with the Federal banking agencies (as defined
6 in section 3(z) of the Federal Deposit Insurance Act),
7 shall conduct a study of the extent to which credit is being
8 provided to and for small businesses and farms, as a result
9 of this Act and the amendments made by this Act.

10 (b) REPORT.—Before the end of the 5-year period be-
11 ginning on the date of the enactment of this Act, the Sec-
12 retary, in consultation with the Federal banking agencies,
13 shall submit a report to the Congress on the study con-
14 ducted pursuant to subsection (a) and shall include such
15 recommendations as the Secretary determines to be appro-
16 priate for administrative and legislative action.

17 **Subtitle B—Streamlining Super-**
18 **vision of Bank Holding Compa-**
19 **nies**

20 **SEC. 111. STREAMLINING BANK HOLDING COMPANY SU-**
21 **PERVISION.**

22 Section 5(c) of the Bank Holding Company Act of
23 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

24 “(c) REPORTS AND EXAMINATIONS.—

25 “(1) REPORTS.—

1 “(A) IN GENERAL.—The Board, from time
2 to time, may require a bank holding company
3 and any subsidiary of such company to submit
4 reports under oath to keep the Board informed
5 as to—

6 “(i) its financial condition, systems
7 for monitoring and controlling financial
8 and operating risks, and transactions with
9 depository institution subsidiaries of the
10 bank holding company; and

11 “(ii) compliance by the company or
12 subsidiary with applicable provisions of
13 this Act or any other Federal law that the
14 Board has specific jurisdiction to enforce
15 against such company or subsidiary.

16 “(B) USE OF EXISTING REPORTS.—

17 “(i) IN GENERAL.—For purposes of
18 compliance with this paragraph, the Board
19 shall, to the fullest extent possible,
20 accept—

21 “(I) reports that a bank holding
22 company or any subsidiary of such
23 company has provided or been re-
24 quired to provide to other Federal or

1 State supervisors or to appropriate
2 self-regulatory organizations;

3 “(II) information that is other-
4 wise required to be reported publicly;
5 and

6 “(III) externally audited financial
7 statements.

8 “(ii) AVAILABILITY.—A bank holding
9 company or a subsidiary of such company
10 shall provide to the Board, at the request
11 of the Board, a report referred to in clause
12 (i).

13 “(iii) REPORTS FILED WITH OTHER
14 AGENCIES.—

15 “(I) IN GENERAL.—In the event
16 that the Board requires a report
17 under this subsection from a function-
18 ally regulated subsidiary of a bank
19 holding company of a kind that is not
20 required by another Federal or State
21 regulatory authority or an appropriate
22 self-regulatory organization, the
23 Board shall first request that the ap-
24 propriate regulatory authority or self-

1 regulatory organization obtain such
2 report.

3 “(II) AVAILABILITY FROM OTHER
4 SUBSIDIARY.—If the report is not
5 made available to the Board, and the
6 report is necessary to assess a mate-
7 rial risk to the bank holding company
8 or any of its depository institution
9 subsidiaries or compliance with this
10 Act or any other Federal law that the
11 Board has specific jurisdiction to en-
12 force against such company or sub-
13 sidiary or the systems described in
14 paragraph (2)(A)(ii)(II), the Board
15 may require such functionally regu-
16 lated subsidiary to provide such a re-
17 port to the Board.

18 “(2) EXAMINATIONS.—

19 “(A) EXAMINATION AUTHORITY FOR BANK
20 HOLDING COMPANIES AND SUBSIDIARIES.—
21 Subject to subparagraph (B), the Board may
22 make examinations of each bank holding com-
23 pany and each subsidiary of such holding com-
24 pany in order—

1 “(i) to inform the Board of the nature
2 of the operations and financial condition of
3 the holding company and such subsidiaries;

4 “(ii) to inform the Board of—

5 “(I) the financial and operational
6 risks within the holding company sys-
7 tem that may pose a threat to the
8 safety and soundness of any deposi-
9 tory institution subsidiary of such
10 holding company; and

11 “(II) the systems for monitoring
12 and controlling such risks; and

13 “(iii) to monitor compliance with the
14 provisions of this Act or any other Federal
15 law that the Board has specific jurisdiction
16 to enforce against such company or sub-
17 sidiary and those governing transactions
18 and relationships between any depository
19 institution subsidiary and its affiliates.

20 “(B) FUNCTIONALLY REGULATED SUB-
21 SIDIARIES.—Notwithstanding subparagraph
22 (A), the Board may make examinations of a
23 functionally regulated subsidiary of a bank
24 holding company only if—

1 “(i) the Board has reasonable cause
2 to believe that such subsidiary is engaged
3 in activities that pose a material risk to an
4 affiliated depository institution;

5 “(ii) the Board reasonably determines,
6 after reviewing relevant reports, that ex-
7 amination of the subsidiary is necessary to
8 adequately inform the Board of the sys-
9 tems described in subparagraph (A)(ii)(II);
10 or

11 “(iii) based on reports and other
12 available information, the Board has rea-
13 sonable cause to believe that a subsidiary
14 is not in compliance with this Act or any
15 other Federal law that the Board has spe-
16 cific jurisdiction to enforce against such
17 subsidiary, including provisions relating to
18 transactions with an affiliated depository
19 institution, and the Board cannot make
20 such determination through examination of
21 the affiliated depository institution or the
22 bank holding company.

23 “(C) RESTRICTED FOCUS OF EXAMINA-
24 TIONS.—The Board shall, to the fullest extent

1 possible, limit the focus and scope of any exam-
2 ination of a bank holding company to—

3 “(i) the bank holding company; and

4 “(ii) any subsidiary of the bank hold-
5 ing company that could have a materially
6 adverse effect on the safety and soundness
7 of any depository institution subsidiary of
8 the holding company due to—

9 “(I) the size, condition, or activi-
10 ties of the subsidiary; or

11 “(II) the nature or size of trans-
12 actions between the subsidiary and
13 any depository institution that is also
14 a subsidiary of the bank holding com-
15 pany.

16 “(D) DEFERENCE TO BANK EXAMINA-
17 TIONS.—The Board shall, to the fullest extent
18 possible, for the purposes of this paragraph, use
19 the reports of examinations of depository insti-
20 tutions made by the appropriate Federal and
21 State depository institution supervisory author-
22 ity.

23 “(E) DEFERENCE TO OTHER EXAMINA-
24 TIONS.—The Board shall, to the fullest extent
25 possible, forego an examination by the Board

1 under this paragraph and instead review the re-
2 ports of examination made of—

3 “(i) any registered broker or dealer by
4 or on behalf of the Securities and Ex-
5 change Commission;

6 “(ii) any registered investment adviser
7 properly registered by or on behalf of ei-
8 ther the Securities and Exchange Commis-
9 sion or any State;

10 “(iii) any licensed insurance company
11 by or on behalf of any State regulatory au-
12 thority responsible for the supervision of
13 insurance companies; and

14 “(iv) any other subsidiary that the
15 Board finds to be comprehensively super-
16 vised by a Federal or State authority.

17 “(3) CAPITAL.—

18 “(A) IN GENERAL.—The Board may not,
19 by regulation, guideline, order, or otherwise,
20 prescribe or impose any capital or capital ade-
21 quacy rules, guidelines, standards, or require-
22 ments on any functionally regulated subsidiary
23 of a bank holding company that—

24 “(i) is not an insured depository insti-
25 tution; and

1 “(ii) is—

2 “(I) in compliance with the appli-
3 cable capital requirements of its Fed-
4 eral regulatory authority (including
5 the Securities and Exchange Commis-
6 sion) or State insurance authority;

7 “(II) properly registered as an
8 investment adviser under the Invest-
9 ment Advisers Act of 1940, or with
10 any State; or

11 “(III) is licensed as an insurance
12 agent with the appropriate State in-
13 surance authority.

14 “(B) RULE OF CONSTRUCTION.—Subpara-
15 graph (A) shall not be construed as preventing
16 the Board from imposing capital or capital ade-
17 quacy rules, guidelines, standards, or require-
18 ments with respect to—

19 “(i) activities of a registered invest-
20 ment adviser other than with respect to in-
21 vestment advisory activities or activities in-
22 cidental to investment advisory activities;
23 or

24 “(ii) activities of a licensed insurance
25 agent other than insurance agency activi-

1 ties or activities incidental to insurance
2 agency activities.

3 “(C) LIMITATIONS ON INDIRECT AC-
4 TION.—In developing, establishing, or assessing
5 bank holding company capital or capital ade-
6 quacy rules, guidelines, standards, or require-
7 ments for purposes of this paragraph, the
8 Board may not take into account the activities,
9 operations, or investments of an affiliated in-
10 vestment company registered under the Invest-
11 ment Company Act of 1940, unless the invest-
12 ment company is—

13 “(i) a bank holding company; or

14 “(ii) controlled by a bank holding
15 company by reason of ownership by the
16 bank holding company (including through
17 all of its affiliates) of 25 percent or more
18 of the shares of the investment company,
19 and the shares owned by the bank holding
20 company have a market value equal to
21 more than \$1,000,000.

22 “(4) FUNCTIONAL REGULATION OF SECURITIES
23 AND INSURANCE ACTIVITIES.—

24 “(A) SECURITIES ACTIVITIES.—Securities
25 activities conducted in a functionally regulated

1 subsidiary of a bank shall be subject to regula-
2 tion by the Securities and Exchange Commis-
3 sion, and by relevant State securities authori-
4 ties, as appropriate, subject to section 104 of
5 the Financial Services Modernization Act of
6 1999, to the same extent as if they were con-
7 ducted in a nondepository institution subsidiary
8 of a bank holding company.

9 “(B) INSURANCE ACTIVITIES.—Subject to
10 section 104 of the Financial Services Mod-
11 ernization Act of 1999, insurance agency and
12 brokerage activities and activities as principal
13 conducted in a functionally regulated subsidiary
14 of a bank shall be subject to regulation by a
15 State insurance authority to the same extent as
16 if they were conducted in a nondepository insti-
17 tution subsidiary of a bank holding company.

18 “(5) DEFINITION.—For purposes of this sub-
19 section, the term ‘functionally regulated subsidiary’
20 means any company—

21 “(A) that is not a bank holding company
22 or an insured depository institution; and

23 “(B) that is—

1 “(i) a broker or dealer that is reg-
2 istered under the Securities Exchange Act
3 of 1934;

4 “(ii) a registered investment adviser,
5 properly registered by or on behalf of ei-
6 ther the Securities and Exchange Commis-
7 sion or any State, with respect to the in-
8 vestment advisory activities of such invest-
9 ment adviser and activities incidental to
10 such investment advisory activities;

11 “(iii) an investment company that is
12 registered under the Investment Company
13 Act of 1940;

14 “(iv) an insurer, with respect to insur-
15 ance activities of the insurer and activities
16 incidental to such insurance activities, that
17 is subject to supervision by a State insur-
18 ance regulator; or

19 “(v) an entity that is subject to regu-
20 lation by the Commodity Futures Trading
21 Commission, with respect to the commod-
22 ities activities of such entity and activities
23 incidental to such commodities activities.”.

1 **SEC. 112. AUTHORITY OF STATE INSURANCE REGULATOR**
2 **AND SECURITIES AND EXCHANGE COMMIS-**
3 **SION.**

4 (a) BANK HOLDING COMPANIES.—Section 5 of the
5 Bank Holding Company Act of 1956 (12 U.S.C. 1844)
6 is amended by adding at the end the following new sub-
7 section:

8 “(g) AUTHORITY OF STATE INSURANCE REGULATOR
9 AND THE SECURITIES AND EXCHANGE COMMISSION.—

10 “(1) IN GENERAL.—Notwithstanding any other
11 provision of law, any regulation, order, or other ac-
12 tion of the Board which requires a bank holding
13 company to provide funds or other assets to a sub-
14 sidiary insured depository institution shall not be ef-
15 fective nor enforceable with respect to an entity de-
16 scribed in subparagraph (A) if—

17 “(A) such funds or assets are to be pro-
18 vided by—

19 “(i) a bank holding company that is
20 an insurance company, a broker or dealer
21 registered under the Securities Exchange
22 Act of 1934, an investment company reg-
23 istered under the Investment Company Act
24 of 1940, or an investment adviser reg-
25 istered by or on behalf of either the Securi-

1 ties and Exchange Commission or any
2 State; or

3 “(ii) an affiliate of the depository in-
4 stitution which is an insurance company or
5 a broker or dealer registered under the Se-
6 curities Exchange Act of 1934, an invest-
7 ment company registered under the Invest-
8 ment Company Act of 1940, or an invest-
9 ment adviser registered by or on behalf of
10 either the Securities and Exchange Com-
11 mission or any State; and

12 “(B) the State insurance authority for the
13 insurance company or the Securities and Ex-
14 change Commission for the registered broker,
15 dealer, investment adviser (solely with respect
16 to investment advisory activities or activities in-
17 cidental thereto), or investment company, as
18 the case may be, determines in writing sent to
19 the holding company and the Board that the
20 holding company shall not provide such funds
21 or assets because such action would have a ma-
22 terial adverse effect on the financial condition
23 of the insurance company or the broker, dealer,
24 investment company, or investment adviser, as
25 the case may be.

1 “(2) NOTICE TO STATE INSURANCE AUTHORITY
2 OR SEC REQUIRED.—If the Board requires a bank
3 holding company, or an affiliate of a bank holding
4 company, which is an insurance company or a
5 broker, dealer, investment company, or investment
6 adviser described in paragraph (1)(A) to provide
7 funds or assets to an insured depository institution
8 subsidiary of the holding company pursuant to any
9 regulation, order, or other action of the Board re-
10 ferred to in paragraph (1), the Board shall promptly
11 notify the State insurance authority for the insur-
12 ance company, the Securities and Exchange Com-
13 mission, or State securities regulator, as the case
14 may be, of such requirement.

15 “(3) DIVESTITURE IN LIEU OF OTHER AC-
16 TION.—If the Board receives a notice described in
17 paragraph (1)(B) from a State insurance authority
18 or the Securities and Exchange Commission with re-
19 gard to a bank holding company or affiliate referred
20 to in that paragraph, the Board may order the bank
21 holding company to divest the insured depository in-
22 stitution not later than 180 days after receiving the
23 notice, or such longer period as the Board deter-
24 mines consistent with the safe and sound operation
25 of the insured depository institution.

1 “(4) CONDITIONS BEFORE DIVESTITURE.—Dur-
2 ing the period beginning on the date an order to di-
3 vest is issued by the Board under paragraph (3) to
4 a bank holding company and ending on the date the
5 divestiture is completed, the Board may impose any
6 conditions or restrictions on the holding company’s
7 ownership or operation of the insured depository in-
8 stitution, including restricting or prohibiting trans-
9 actions between the insured depository institution
10 and any affiliate of the institution, as are appro-
11 priate under the circumstances.

12 “(5) RULE OF CONSTRUCTION.—No provision
13 of this subsection may be construed as limiting or
14 otherwise affecting, except to the extent specifically
15 provided in this subsection, the regulatory authority,
16 including the scope of the authority, of any Federal
17 agency or department with regard to any entity that
18 is within the jurisdiction of such agency or depart-
19 ment.”.

20 (b) SUBSIDIARIES OF DEPOSITORY INSTITUTIONS.—
21 The Federal Deposit Insurance Act (12 U.S.C. 1811 et
22 seq.) is amended by adding at the end the following new
23 section:

1 **“SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR**
2 **AND SECURITIES AND EXCHANGE COMMIS-**
3 **SION.**

4 “(a) IN GENERAL.—Notwithstanding any other pro-
5 vision of law, the provisions of—

6 “(1) section 5(c) of the Bank Holding Company
7 Act of 1956 that limit the authority of the Board of
8 Governors of the Federal Reserve System to require
9 reports from, to make examinations of, or to impose
10 capital requirements on holding companies and their
11 functionally regulated subsidiaries or that require
12 deference to other regulators;

13 “(2) section 5(g) of the Bank Holding Company
14 Act of 1956 that limit the authority of the Board to
15 require a functionally regulated subsidiary of a hold-
16 ing company to provide capital or other funds or as-
17 sets to an insured depository institution subsidiary
18 of the holding company and to take certain actions
19 including requiring divestiture of the insured deposi-
20 tory institution; and

21 “(3) section 10A of the Bank Holding Company
22 Act of 1956 that limit whatever authority the Board
23 might otherwise have to take direct or indirect ac-
24 tion with respect to holding companies and their
25 functionally regulated subsidiaries,

1 shall also limit whatever authority that a Federal banking
2 agency might otherwise have under any statute or regula-
3 tion to require reports, make examinations, impose capital
4 requirements, or take any other direct or indirect action
5 with respect to any functionally regulated affiliate of an
6 insured depository institution, subject to the same stand-
7 ards and requirements as are applicable to the Board
8 under those provisions.

9 “(b) CERTAIN EXEMPTION AUTHORIZED.—No provi-
10 sion of this section shall be construed as preventing the
11 Corporation, if the Corporation finds it necessary to deter-
12 mine the condition of an insured depository institution for
13 insurance purposes, from examining an affiliate of any in-
14 sured depository institution, pursuant to section 10(b)(4),
15 as may be necessary to disclose fully the relationship be-
16 tween the depository institution and the affiliate, and the
17 effect of such relationship on the depository institution.

18 “(c) DEFINITIONS.—For purposes of this section, the
19 following terms shall apply:

20 “(1) FUNCTIONALLY REGULATED SUB-
21 SIDIARY.—The term ‘functionally regulated sub-
22 sidiary’ has the same meaning as in section 5(c)(5)
23 of the Bank Holding Company Act of 1956.

24 “(2) FUNCTIONALLY REGULATED AFFILIATE.—
25 The term ‘functionally regulated affiliate’ means,

1 with respect to any insured depository institution,
2 any affiliate of such insured depository institution
3 that is—

4 “(A) not a depository institution holding
5 company; and

6 “(B) a company described in any clause of
7 section 5(c)(5)(B) of the Bank Holding Com-
8 pany Act of 1956.”.

9 **SEC. 113. ROLE OF THE BOARD OF GOVERNORS OF THE**
10 **FEDERAL RESERVE SYSTEM.**

11 The Bank Holding Company Act of 1956 (12 U.S.C.
12 1841 et seq.) is amended by inserting after section 10 the
13 following new section:

14 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
15 **PERVISORY, AND ENFORCEMENT AUTHORITY**
16 **OF THE BOARD.**

17 “(a) LIMITATION ON DIRECT ACTION.—The Board
18 may not prescribe regulations, issue or seek entry of or-
19 ders, impose restraints, restrictions, guidelines, require-
20 ments, safeguards, or standards, or otherwise take any ac-
21 tion under or pursuant to any provision of this Act or sec-
22 tion 8 of the Federal Deposit Insurance Act against or
23 with respect to a functionally regulated subsidiary of a
24 bank holding company unless—

1 “(1) the action is necessary to prevent or re-
2 dress an unsafe or unsound practice or breach of fi-
3 duciary duty by such subsidiary that poses a mate-
4 rial risk to—

5 “(A) the financial safety, soundness, or
6 stability of an affiliated insured depository in-
7 stitution; or

8 “(B) the domestic or international pay-
9 ment system; and

10 “(2) the Board finds that it is not reasonably
11 possible to protect effectively against the material
12 risk at issue through action directed at or against
13 the affiliated insured depository institution or
14 against insured depository institutions generally.

15 “(b) LIMITATION ON INDIRECT ACTION.—The Board
16 may not prescribe regulations, issue or seek entry of or-
17 ders, impose restraints, restrictions, guidelines, require-
18 ments, safeguards, or standards, or otherwise take any ac-
19 tion under or pursuant to any provision of this Act or sec-
20 tion 8 of the Federal Deposit Insurance Act against or
21 with respect to a bank holding company that requires the
22 bank holding company to require a functionally regulated
23 subsidiary of the holding company to engage, or to refrain
24 from engaging, in any conduct or activities unless the
25 Board could take such action directly against or with re-

1 spect to the functionally regulated subsidiary in accord-
2 ance with subsection (a).

3 “(c) ACTIONS SPECIFICALLY AUTHORIZED.—Not-
4 withstanding subsection (a) or (b), the Board may take
5 action under this Act or section 8 of the Federal Deposit
6 Insurance Act to enforce compliance by a functionally reg-
7 ulated subsidiary of a bank holding company with Federal
8 law that the Board has specific jurisdiction to enforce
9 against such subsidiary.

10 “(d) FUNCTIONALLY REGULATED SUBSIDIARY DE-
11 FINED.—For purposes of this section, the term ‘function-
12 ally regulated subsidiary’ has the same meaning as in sec-
13 tion 5(c)(5).”.

14 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

15 (a) COMPTROLLER OF THE CURRENCY.—

16 (1) IN GENERAL.—The Comptroller of the Cur-
17 rency may, by regulation or order, impose restric-
18 tions or requirements on relationships or trans-
19 actions between a national bank and a subsidiary of
20 the national bank which the Comptroller finds are—

21 (A) consistent with the purposes of this
22 Act, title LXII of the Revised Statutes of the
23 United States, and other Federal law applicable
24 to national banks; and

1 (B) appropriate to avoid any significant
2 risk to the safety and soundness of insured de-
3 pository institutions or any Federal deposit in-
4 surance fund or other adverse effects, such as
5 undue concentration of resources, decreased or
6 unfair competition, conflicts of interests, or un-
7 sound banking practices.

8 (2) REVIEW.—The Comptroller of the Currency
9 shall regularly—

10 (A) review all restrictions or requirements
11 established pursuant to paragraph (1) to deter-
12 mine whether there is a continuing need for any
13 such restriction or requirement to carry out the
14 purposes of the Act, including the avoidance of
15 any adverse effect referred to in paragraph
16 (1)(B); and

17 (B) modify or eliminate any such restric-
18 tion or requirement the Comptroller finds is no
19 longer required for such purposes.

20 (b) BOARD OF GOVERNORS OF THE FEDERAL RE-
21 SERVE SYSTEM.—

22 (1) IN GENERAL.—The Board of Governors of
23 the Federal Reserve System may, by regulation or
24 order, impose restrictions or requirements on rela-
25 tionships or transactions—

1 (A) between an insured depository institu-
2 tion subsidiary of a bank holding company and
3 any affiliate of such insured depository institu-
4 tion (other than a subsidiary of such institu-
5 tion); or

6 (B) between a State member bank and a
7 subsidiary of such bank,
8 if the Board makes a finding described in paragraph
9 (2) with respect to such restriction or requirement.

10 (2) FINDING.—The Board of Governors of the
11 Federal Reserve System may exercise authority
12 under paragraph (1) if the Board finds that the ex-
13 ercise of such authority is—

14 (A) consistent with the purposes of this
15 Act, the Bank Holding Company Act of 1956,
16 the Federal Reserve Act, and other Federal law
17 applicable to depository institution subsidiaries
18 of bank holding companies or State banks (as
19 the case may be); and

20 (B) appropriate to prevent an evasion of
21 any provision of law referred to in subpara-
22 graph (A) or to avoid any significant risk to the
23 safety and soundness of insured depository in-
24 stitutions or any Federal deposit insurance
25 fund or other adverse effects, such as undue

1 concentration of resources, decreased or unfair
2 competition, conflicts of interests, or unsound
3 banking practices.

4 (3) REVIEW.—The Board of Governors of the
5 Federal Reserve System shall regularly—

6 (A) review all restrictions or requirements
7 established pursuant to paragraph (1) or (4) to
8 determine whether there is a continuing need
9 for any such restriction or requirement to carry
10 out the purposes of the Act, including the
11 avoidance of any adverse effect referred to in
12 paragraph (2)(B) or (4)(A); and

13 (B) modify or eliminate any such restric-
14 tion or requirement the Board finds is no
15 longer required for such purposes.

16 (4) FOREIGN BANKS.—The Board may, by reg-
17 ulation or order, impose restrictions or requirements
18 on relationships or transactions between a branch,
19 agency, or commercial lending company of a foreign
20 bank in the United States and any affiliate in the
21 United States of such foreign bank that the Board
22 finds are—

23 (A) consistent with the purposes of this
24 Act, the Bank Holding Company Act of 1956,
25 the Federal Reserve Act, and other Federal law

1 applicable to foreign banks and their affiliates
2 in the United States; and

3 (B) appropriate to prevent an evasion of
4 any provision of law referred to in subpara-
5 graph (A) or to avoid any significant risk to the
6 safety and soundness of insured depository in-
7 stitutions or any Federal deposit insurance
8 fund or other adverse effects, such as undue
9 concentration of resources, decreased or unfair
10 competition, conflicts of interests, or unsound
11 banking practices.

12 (c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

13 (1) IN GENERAL.—The Federal Deposit Insur-
14 ance Corporation may, by regulation or order, im-
15 pose restrictions or requirements on relationships or
16 transactions between a State nonmember bank (as
17 defined in section 3 of the Federal Deposit Insur-
18 ance Act) and a subsidiary of the State nonmember
19 bank which the Corporation finds are—

20 (A) consistent with the purposes of this
21 Act, the Federal Deposit Insurance Act, or
22 other Federal law applicable to State non-
23 member banks; and

24 (B) appropriate to avoid any significant
25 risk to the safety and soundness of insured de-

1 pository institutions or any Federal deposit in-
2 surance fund or other adverse effects, such as
3 undue concentration of resources, decreased or
4 unfair competition, conflicts of interests, or un-
5 sound banking practices.

6 (2) REVIEW.—The Federal Deposit Insurance
7 Corporation shall regularly—

8 (A) review all restrictions or requirements
9 established pursuant to paragraph (1) to deter-
10 mine whether there is a continuing need for any
11 such restriction or requirement to carry out the
12 purposes of the Act, including the avoidance of
13 any adverse effect referred to in paragraph
14 (1)(B); and

15 (B) modify or eliminate any such restric-
16 tion or requirement the Corporation finds is no
17 longer required for such purposes.

18 **SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

19 (a) EXCLUSIVE COMMISSION AUTHORITY.—Except
20 as provided in subsection (c), a Federal banking agency
21 may not inspect or examine any registered investment
22 company that is not a bank holding company or a savings
23 and loan holding company.

24 (b) EXAMINATION RESULTS AND OTHER INFORMA-
25 TION.—The Commission shall provide to any Federal

1 banking agency, upon request, the results of any examina-
2 tion, reports, records, or other information with respect
3 to any registered investment company to the extent nec-
4 essary for the agency to carry out its statutory responsibil-
5 ities.

6 (c) CERTAIN EXAMINATIONS AUTHORIZED.—Noth-
7 ing in this section shall prevent the Corporation, if the
8 Corporation finds it necessary to determine the condition
9 of an insured depository institution for insurance pur-
10 poses, from examining an affiliate of any insured deposi-
11 tory institution, pursuant to its authority under section
12 10(b)(4) of the Federal Deposit Insurance Act, as may
13 be necessary to disclose fully the relationship between the
14 insured depository institution and the affiliate, and the ef-
15 fect of such relationship on the insured depository institu-
16 tion.

17 (d) DEFINITIONS.—For purposes of this section, the
18 following definitions shall apply:

19 (1) BANK HOLDING COMPANY.—The term
20 “bank holding company” has the same meaning as
21 in section 2 of the Bank Holding Company Act of
22 1956.

23 (2) COMMISSION.—The term “Commission”
24 means the Securities and Exchange Commission.

1 (3) CORPORATION.—The term “Corporation”
2 means the Federal Deposit Insurance Corporation.

3 (4) FEDERAL BANKING AGENCY.—The term
4 “Federal banking agency” has the same meaning as
5 in section 3(z) of the Federal Deposit Insurance Act.

6 (5) REGISTERED INVESTMENT COMPANY.—The
7 term “registered investment company” means an in-
8 vestment company that is registered with the Com-
9 mission under the Investment Company Act of 1940.

10 (6) SAVINGS AND LOAN HOLDING COMPANY.—
11 The term “savings and loan holding company” has
12 the same meaning as in section 10(a)(1)(D) of the
13 Home Owners’ Loan Act.

14 **SEC. 116. ELIMINATION OF APPLICATION REQUIREMENT**
15 **FOR FINANCIAL HOLDING COMPANIES.**

16 (a) PREVENTION OF DUPLICATIVE FILINGS.—Sec-
17 tion 5(a) of the Bank Holding Company Act of 1956 (12
18 U.S.C. 1844(a)) is amended by adding at the end the fol-
19 lowing new sentence: “A declaration filed in accordance
20 with section 4(l)(1)(C) shall satisfy the requirements of
21 this subsection with regard to the registration of a bank
22 holding company but not any requirement to file an appli-
23 cation to acquire a bank pursuant to section 3.”.

1 (b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of
2 the Bank Holding Company Act of 1956 (12 U.S.C.
3 1844(e)(1)) is amended—

4 (1) by striking “Financial Institutions Super-
5 visory Act of 1966, order” and inserting “Financial
6 Institutions Supervisory Act of 1966, at the election
7 of the bank holding company—

8 “(A) order”; and

9 (2) by striking “shareholders of the bank hold-
10 ing company. Such distribution” and inserting
11 “shareholders of the bank holding company; or

12 “(B) order the bank holding company, after due
13 notice and opportunity for hearing, and after con-
14 sultation with the primary supervisor for the bank,
15 which shall be the Comptroller of the Currency in
16 the case of a national bank, and the Federal Deposit
17 Insurance Corporation and the appropriate State su-
18 pervisor in the case of an insured nonmember bank,
19 to terminate (within 120 days or such longer period
20 as the Board may direct) the ownership or control
21 of any such bank by such company.

22 The distribution referred to in subparagraph (A)”.

1 **SEC. 117. PROHIBITION ON FDIC ASSISTANCE TO AFFILI-**
2 **ATES AND SUBSIDIARIES.**

3 Section 11(a)(4)(B) of the Federal Deposit Insurance
4 Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking “to
5 benefit any shareholder of” and inserting “to benefit any
6 shareholder or affiliate (other than an insured depository
7 institution that receives assistance in accordance with the
8 provisions of this Act) of”.

9 **SEC. 118. REPEAL OF SAVINGS BANK PROVISIONS IN THE**
10 **BANK HOLDING COMPANY ACT OF 1956.**

11 Section 3(f) of the Bank Holding Company Act of
12 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

13 “(f) [Repealed].”.

14 **SEC. 119. TECHNICAL AMENDMENT.**

15 Section 2(o)(1)(A) of the Bank Holding Company
16 Act of 1956 (12 U.S.C. 1841(o)(1)(A)) is amended by
17 striking “section 38(b)” and inserting “section 38”.

18 **Subtitle C—Subsidiaries of**
19 **National Banks**

20 **SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF**
21 **NATIONAL BANKS.**

22 (a) IN GENERAL.—Chapter 1 of title LXII of the Re-
23 vised Statutes of the United States (12 U.S.C. 21 et seq.)
24 is amended—

25 (1) by redesignating section 5136A as section
26 5136B; and

1 (2) by inserting after section 5136 (12 U.S.C.
2 24) the following new section:

3 **“SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

4 “(a) AUTHORIZATION TO CONDUCT IN OPERATING
5 SUBSIDIARIES CERTAIN ACTIVITIES THAT ARE FINAN-
6 CIAL IN NATURE.—

7 “(1) IN GENERAL.—A national bank may con-
8 trol a financial subsidiary, or hold an interest in a
9 financial subsidiary, only if—

10 “(A) the national bank is highly rated or
11 described in paragraph (2);

12 “(B) the financial subsidiary engages only
13 in—

14 “(i) activities that have been deter-
15 mined to be financial in nature or inci-
16 dental to financial activities for bank hold-
17 ing companies pursuant to section 4(k) of
18 the Bank Holding Company Act of 1956;
19 and

20 “(ii) activities that are permitted for
21 national banks to engage in directly (sub-
22 ject to the same terms and conditions that
23 govern the conduct of the activities by a
24 national bank);

1 “(C) the activities engaged in by the finan-
2 cial subsidiary as a principal do not include—

3 “(i) insuring, guaranteeing, or indem-
4 nifying against loss, harm, damage, illness,
5 disability, or death (except to the extent
6 permitted under section 302 of the Finan-
7 cial Services Modernization Act of 1999);

8 “(ii) providing or issuing annuities the
9 income of which is subject to tax treatment
10 under section 72 of the Internal Revenue
11 Code of 1986;

12 “(iii) real estate development or real
13 estate investment activities, unless other-
14 wise expressly authorized by law; or

15 “(iv) any activity described in section
16 4(k)(4)(H) or (I) of the Bank Holding
17 Company Act of 1956;

18 “(D) the national bank and each insured
19 depository institution affiliate of the national
20 bank are well capitalized and well managed;

21 “(E) the aggregate consolidated total as-
22 sets of all financial subsidiaries of the national
23 bank do not exceed 5 percent of the total assets
24 of the parent bank or \$20,000,000,000, which-
25 ever is less; and

1 “(F) the national bank has received the
2 approval of the Comptroller of the Currency for
3 the financial subsidiary to engage in such ac-
4 tivities, which approval shall be based solely
5 upon the factors set forth in subparagraph (D)
6 and the factors set forth in subsection (c).

7 “(2) SMALLER NATIONAL BANKS.—A national
8 bank is described in this paragraph if—

9 “(A) the aggregate consolidated total as-
10 sets of the national bank and its insured deposi-
11 tory institution affiliates do not exceed
12 \$1,000,000,000; and

13 “(B) the national bank has capital that is
14 at least 200 basis points above the levels estab-
15 lished under section 38 of the Federal Deposit
16 Insurance Act for the bank to be considered
17 ‘well capitalized’ for each capital measure.

18 “(3) REGULATIONS REQUIRED.—Before the end
19 of the 180-day period beginning on the date of the
20 enactment of the Financial Services Modernization
21 Act of 1999, the Comptroller of the Currency shall,
22 by regulation, prescribe procedures for the enforce-
23 ment of this section.

24 “(b) CAPITAL REDUCTION REQUIRED.—In deter-
25 mining compliance with applicable capital standards—

1 “(1) the aggregate amount of the outstanding
2 equity investment, including retained earnings, of a
3 national bank in a financial subsidiary shall be de-
4 ducted from the assets and tangible equity of the na-
5 tional bank; and

6 “(2) the assets and liabilities of the financial
7 subsidiary shall not be consolidated with those of the
8 national bank.

9 “(c) SAFEGUARDS FOR THE BANK.—A national bank
10 that establishes or maintains a financial subsidiary shall
11 assure that—

12 “(1) the procedures of the national bank for
13 identifying and managing financial and operational
14 risks within the national bank and the financial sub-
15 sidiary adequately protect the national bank from
16 such risks;

17 “(2) the bank has, for the protection of the
18 bank, reasonable policies and procedures to preserve
19 the separate corporate identity and limited liability
20 of the national bank and the financial subsidiaries of
21 the national bank; and

22 “(3) the national bank is in compliance with
23 this section.

1 “(d) PROVISIONS APPLICABLE TO NATIONAL BANKS
2 THAT FAIL TO CONTINUE TO MEET CERTAIN REQUIRE-
3 MENTS.—

4 “(1) IN GENERAL.—If a national bank, or an
5 insured depository institution affiliate of a national
6 bank, does not continue to meet the requirements of
7 subparagraph (A) or (D) of subsection (a)(1) or the
8 requirements of subsection (c), the Comptroller of
9 the Currency shall promptly give notice to the na-
10 tional bank to that effect, describing the conditions
11 giving rise to the notice, and shall transmit a copy
12 of such notice to the Comptroller General of the
13 United States.

14 “(2) AGREEMENT TO CORRECT CONDITIONS.—
15 Not later than 45 days after receipt by a national
16 bank of a notice given under paragraph (1) (or such
17 additional period as the Comptroller of the Currency
18 may permit), the national bank shall execute an
19 agreement acceptable to the Comptroller of the Cur-
20 rency, and any relevant insured depository institu-
21 tion affiliate shall execute an agreement acceptable
22 to its appropriate Federal banking agency, to comply
23 with the requirements of subparagraph (A) or (D) of
24 subsection (a)(1) and the requirements of subsection
25 (c).

1 “(3) IMPOSITION OF CONDITIONS.—Until the
2 conditions described in a notice under paragraph (1)
3 are corrected—

4 “(A) the Comptroller of the Currency may
5 impose such limitations on the conduct or ac-
6 tivities of the national bank or any subsidiary
7 of the national bank as the Comptroller of the
8 Currency determines to be appropriate under
9 the circumstances; and

10 “(B) the appropriate Federal banking
11 agency may impose such limitations on the con-
12 duct or activities of any relevant insured deposi-
13 tory institution affiliate or any subsidiary of
14 such institution as such agency determines to
15 be appropriate under the circumstances.

16 “(4) FAILURE TO CORRECT.—

17 “(A) IN GENERAL.—If the conditions de-
18 scribed in a notice to a national bank under
19 paragraph (1) are not corrected within 180
20 days after the date of receipt by the national
21 bank of the notice, the Comptroller of the Cur-
22 rency shall require the national bank to divest
23 control of any financial subsidiary and sub-
24 sidiary controlled pursuant to section 122 of

1 the Financial Services Modernization Act of
2 1999 within—

3 “(i) 24 months after the date of re-
4 ceipt by the national bank of the notice
5 under paragraph (1);

6 “(ii) 12 months after the date of re-
7 ceipt by the national bank of such notice
8 if the national bank had previously re-
9 ceived a notice under paragraph (1); or

10 “(iii) such earlier period as the Comp-
11 troller of the Currency determines to be
12 appropriate under the circumstances.

13 “(B) WAITING PERIOD.—A national bank
14 that is required to divest a subsidiary pursuant
15 to subparagraph (A) may not acquire control of
16 any financial subsidiary or any subsidiary de-
17 scribed in section 122 of the Financial Services
18 Modernization Act of 1999 during the 3-year
19 period beginning on the date such divestiture is
20 completed.

21 “(5) PERIODIC REPORTS TO THE CONGRESS.—
22 The Comptroller General of the United States shall
23 periodically submit a report to the Congress on no-
24 tices received under this subsection and the actions

1 taken by the Comptroller General with respect to
2 such notices.

3 “(e) PRESERVATION OF EXISTING OPERATING SUB-
4 SIDIARIES.—Notwithstanding any other provision of this
5 section, a national bank may retain control of a company,
6 or retain an interest in a company, that the Comptroller
7 of the Currency had specifically approved the national
8 bank to acquire prior to the date of the enactment of the
9 Financial Services Modernization Act of 1999, and con-
10 duct through such company any activities lawfully con-
11 ducted therein as of such date. The provisions of sub-
12 sections (a)(1)(D), (c), and (d) of this section and section
13 23A(e) of the Federal Reserve Act shall apply to the na-
14 tional bank.

15 “(f) AUTHORIZATION TO CONTROL OR OWN SHARES
16 OF OTHER SUBSIDIARIES.—A national bank may control
17 or own shares of, or any other interest in, any subsidiary
18 of an insured bank, other than a bank, that is engaged
19 only in activities that are permissible for the national bank
20 to engage in directly, if such activities are engaged in
21 under the same terms and conditions that would govern
22 the conduct of such activities if conducted by a national
23 bank directly.

24 “(g) FAILURE TO MAINTAIN PUBLIC RATING.—

1 “(1) IN GENERAL.—A national bank that does
2 not remain highly rated after acquiring or estab-
3 lishing a financial subsidiary pursuant to subsection
4 (a)(1)(A) shall not, directly or through a subsidiary,
5 purchase or acquire any additional equity capital of
6 any financial subsidiary.

7 “(2) EQUITY CAPITAL.—For purposes of this
8 subsection, the term ‘equity capital’ includes, in ad-
9 dition to any equity instrument, any debt instrument
10 issued by a financial subsidiary, if the instrument
11 qualifies as capital of the subsidiary under any Fed-
12 eral or State law, regulation, or interpretation appli-
13 cable to the subsidiary.

14 “(h) DEFINITIONS.—For purposes of this section and
15 section 122 of the Financial Services Modernization Act
16 of 1999, the following definitions shall apply:

17 “(1) AFFILIATE, COMPANY, CONTROL, AND
18 SUBSIDIARY.—The terms ‘affiliate’, ‘company’, ‘con-
19 trol’, and ‘subsidiary’ have the same meanings as in
20 section 2 of the Bank Holding Company Act of
21 1956.

22 “(2) APPROPRIATE FEDERAL BANKING AGENCY,
23 DEPOSITORY INSTITUTION, INSURED BANK, AND IN-
24 SURED DEPOSITORY INSTITUTION.—The terms ‘ap-
25 propriate Federal banking agency’, ‘depository insti-

1 tution’, ‘insured bank’, and ‘insured depository insti-
2 tution’ have the same meanings as in section 3 of
3 the Federal Deposit Insurance Act.

4 “(3) FINANCIAL SUBSIDIARY.—The term ‘fi-
5 nancial subsidiary’ means a company that is a sub-
6 sidiary of 1 or more insured banks, other than a
7 subsidiary that—

8 “(A) engages solely in activities that na-
9 tional banks are permitted to engage in directly
10 and are conducted subject to the same terms
11 and conditions that govern the conduct of such
12 activities by national banks; or

13 “(B) a national bank is specifically author-
14 ized by the express terms of a Federal statute
15 (other than this section), and not by implication
16 or interpretation, to control, such as by section
17 25 or 25A of the Federal Reserve Act, the
18 Bank Service Company Act, or section 122 of
19 the Financial Services Modernization Act of
20 1999.

21 “(4) HIGHLY RATED.—A national bank shall be
22 considered to be ‘highly rated’ if the bank has not
23 fewer than 1 issue of outstanding subordinated debt
24 that is currently rated within the 2 highest invest-
25 ment grade rating categories by a nationally recog-

1 nized statistical rating organization (and, if the rat-
2 ing organization uses subparts within any invest-
3 ment grade rating, only the 2 highest subparts of
4 the highest grade rating shall be taken into ac-
5 count).

6 “(5) SUBORDINATED DEBT.—The term ‘subor-
7 dinated debt’ means unsecured debt that—

8 “(A) has an original weighted average ma-
9 turity of not less than 5 years;

10 “(B) has a total face amount equal to at
11 least 2 percent of the bank’s total risk-weighted
12 assets at the time of issuance;

13 “(C) is subordinated as to payment of
14 principal and interest to all other indebtedness
15 of the bank, including deposits;

16 “(D) is not supported by any form of cred-
17 it enhancement, including a guarantee or stand-
18 by letter of credit; and

19 “(E) is not held in whole or in part by any
20 affiliate or institution affiliated party of the
21 bank.

22 “(6) WELL CAPITALIZED.—The term ‘well cap-
23 italized’ has the same meaning as in section 38 of
24 the Federal Deposit Insurance Act.

1 “(7) WELL MANAGED.—The term ‘well man-
2 aged’ means—

3 “(A) in the case of a depository institution
4 that has been examined, unless otherwise deter-
5 mined in writing by the appropriate Federal
6 banking agency—

7 “(i) the achievement of a composite
8 rating of 1 or 2 under the Uniform Finan-
9 cial Institutions Rating System (or an
10 equivalent rating under an equivalent rat-
11 ing system) in connection with the most re-
12 cent examination or subsequent review of
13 the depository institution; and

14 “(ii) at least a rating of 2 for man-
15 agement, if such rating is given; or

16 “(B) in the case of any depository institu-
17 tion that has not been examined, the existence
18 and use of managerial resources that the appro-
19 priate Federal banking agency determines are
20 satisfactory.”.

21 (b) LIMITING THE EXPOSURE OF A BANK TO A FI-
22 NANCIAL SUBSIDIARY TO THE AMOUNT OF PERMISSIBLE
23 EXPOSURE TO AN AFFILIATE.—Section 23A of the Fed-
24 eral Reserve Act (12 U.S.C. 371c) is amended—

1 (1) by redesignating subsection (e) as sub-
2 section (f); and

3 (2) by inserting after subsection (d), the fol-
4 lowing new subsection:

5 “(e) RULES RELATING TO BANKS WITH FINANCIAL
6 SUBSIDIARIES.—

7 “(1) FINANCIAL SUBSIDIARY DEFINED.—For
8 purposes of this section and section 23B, the term
9 ‘financial subsidiary’ means any company which is a
10 subsidiary of a bank that would be a financial sub-
11 sidiary of a national bank under section 5136A(h) of
12 the Revised Statutes of the United States.

13 “(2) FINANCIAL SUBSIDIARY TREATED AS AN
14 AFFILIATE.—For purposes of applying this section
15 and section 23B, and notwithstanding subsection
16 (b)(2) of this section and section 23B(d)(1), a finan-
17 cial subsidiary of a bank—

18 “(A) shall be deemed to be an affiliate of
19 the bank; and

20 “(B) shall not be deemed to be a sub-
21 sidiary of the bank.

22 “(3) ANTI-EVASION PROVISION.—For purposes
23 of this section and section 23B, any purchase of, or
24 investment in, the securities of a financial subsidiary
25 of a bank by an affiliate of the bank shall be consid-

1 ered to be a purchase of or investment in such secu-
2 rities by the bank and any extension of credit by an
3 affiliate of a bank to a financial subsidiary of a bank
4 shall be considered to be an extension of credit to
5 the financial subsidiary by the bank unless the
6 Board determines that it is not necessary to treat
7 extensions of credit in this manner in order to
8 achieve the purposes of this Act and section 5136A
9 of the Revised Statutes of the United States.”.

10 (c) ANTITYING.—Section 106(a) of the Bank Holding
11 Company Act Amendments of 1970 (12 U.S.C. 1971) is
12 amended by adding at the end the following new sentence:
13 “For purposes of this section, a financial subsidiary of a
14 national bank engaging in activities pursuant to section
15 5136A(a) of the Revised Statutes of the United States
16 shall be deemed to be a subsidiary of a bank holding com-
17 pany, and not a subsidiary of a bank.”.

18 (d) STATE BANK PARITY.—

19 (1) IN GENERAL.—An insured State bank may
20 control or hold an interest in a subsidiary that en-
21 gages in activities that would only be permissible for
22 a financial subsidiary of a national bank only on the
23 same terms and conditions as apply to control of
24 such subsidiary by a national bank, except that the
25 term “appropriate Federal banking agency” (as de-

1 fined in section 3(q) of the Federal Deposit Insur-
2 ance Act) shall be substituted for the term “Comp-
3 troller of the Currency” in applying section
4 5136A(a)(1)(F) for purposes of this paragraph.

5 (2) PRESERVATION OF EXISTING SUBSIDI-
6 ARIES.—Notwithstanding paragraph (1), an insured
7 State bank may retain control of a subsidiary, or re-
8 tain an interest in a subsidiary, that the State bank
9 lawfully controlled or acquired before the date of the
10 enactment of the Financial Services Modernization
11 Act of 1999, and conduct through such subsidiary
12 any activities lawfully conducted in such subsidiary
13 as of such date.

14 (3) SUBSIDIARY DEFINED.—For purposes of
15 this subsection, the term “subsidiary” means any
16 company that is a subsidiary (as defined in section
17 3(w)(4) of the Federal Deposit Insurance Act) of 1
18 or more insured banks.

19 (e) CLERICAL AMENDMENT.—The table of sections
20 for chapter 1 of title LXII of the Revised Statutes of the
21 United States is amended—

22 (1) by redesignating the item relating to section
23 5136A as relating to section 5136B; and

24 (2) by inserting after the item relating to sec-
25 tion 5136 the following new item:

“5136A. Subsidiaries of national banks.”.

1 **SEC. 122. AGENCY ACTIVITIES.**

2 (a) IN GENERAL.—A national bank may control a
3 subsidiary, or hold an interest in a subsidiary, that en-
4 gages in activities that have been determined to be finan-
5 cial in nature or incidental to such financial activities pur-
6 suant to section 4(k) of the Bank Holding Company Act
7 of 1956, and that are not permissible for national banks
8 to engage in directly, only if—

9 (1) the subsidiary engages in such activities
10 solely as agent and not directly or indirectly as prin-
11 cipal; and

12 (2) the national bank and each insured deposi-
13 tory institution affiliate of the national bank is well
14 capitalized and well managed.

15 (b) FEDERAL RESERVE ACT.—A subsidiary con-
16 trolled by a bank pursuant to this section shall be treated
17 as a financial subsidiary of the bank for purposes of sec-
18 tion 23A(e)(2) of the Federal Reserve Act.

19 (c) PROVISIONS APPLICABLE TO NATIONAL BANKS
20 THAT FAIL TO CONTINUE TO MEET REQUIREMENTS.—
21 If a national bank or insured depository institution affil-
22 iate fails to continue to meet the requirements of sub-
23 section (a)(2), the Comptroller of the Currency shall give
24 notice to the national bank to that effect describing the
25 conditions giving rise to the notice and the Comptroller
26 of the Currency and the appropriate Federal banking

1 agency for any relevant insured depository institution af-
2 filiate shall take the actions described in section 5136A(d)
3 of the Revised Statutes of the United States.

4 **Subtitle D—Preservation of FTC**
5 **Authority**

6 **SEC. 131. AMENDMENT TO THE BANK HOLDING COMPANY**
7 **ACT OF 1956 TO MODIFY NOTIFICATION AND**
8 **POST-APPROVAL WAITING PERIOD FOR SEC-**
9 **TION 3 TRANSACTIONS.**

10 Section 11(b)(1) of the Bank Holding Company Act
11 of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting
12 “and, if the transaction also involves an acquisition under
13 section 4, the Board shall also notify the Federal Trade
14 Commission of such approval” before the period at the end
15 of the first sentence.

16 **SEC. 132. INTERAGENCY DATA SHARING.**

17 (a) IN GENERAL.—To the extent not prohibited by
18 other law, the Comptroller of the Currency, the Director
19 of the Office of Thrift Supervision, the Federal Deposit
20 Insurance Corporation, and the Board of Governors of the
21 Federal Reserve System shall make available to the Attor-
22 ney General and the Federal Trade Commission any data
23 in the possession of any such banking agency that the
24 antitrust agency deems necessary for antitrust review of
25 any transaction requiring notice to any such antitrust

1 agency or the approval of such agency under section 3 or
2 4 of the Bank Holding Company Act of 1956, section
3 18(c) of the Federal Deposit Insurance Act, the National
4 Bank Consolidation and Merger Act, section 10 of the
5 Home Owners' Loan Act, or the antitrust laws.

6 (b) CONFIDENTIALITY REQUIREMENTS.—

7 (1) IN GENERAL.—Any information or material
8 obtained by any agency pursuant to subsection (a)
9 shall be treated as confidential.

10 (2) PROCEDURES FOR DISCLOSURE.—If any in-
11 formation or material obtained by any agency pursu-
12 ant to subsection (a) is proposed to be disclosed to
13 a third party, written notice of such disclosure shall
14 first be provided to the agency from which such in-
15 formation or material was obtained and an oppor-
16 tunity shall be given to such agency to oppose or
17 limit the proposed disclosure.

18 (3) OTHER PRIVILEGES NOT WAIVED BY DIS-
19 CLOSURE UNDER THIS SECTION.—The provision by
20 any Federal agency of any information or material
21 pursuant to subsection (a) to another agency shall
22 not constitute a waiver, or otherwise affect, any
23 privilege any agency or person may claim with re-
24 spect to such information under Federal or State
25 law.

1 (4) EXCEPTION.—No provision of this section
2 shall be construed as preventing or limiting access to
3 any information by any duly authorized committee
4 of the Congress or the Comptroller General of the
5 United States.

6 (c) BANKING AGENCY INFORMATION SHARING.—The
7 provisions of subsection (b) shall apply to any information
8 or material obtained by any Federal banking agency (as
9 defined in section 3(z) of the Federal Deposit Insurance
10 Act) from any other Federal banking agency.

11 **SEC. 133. CLARIFICATION OF STATUS OF SUBSIDIARIES**
12 **AND AFFILIATES.**

13 (a) CLARIFICATION OF FEDERAL TRADE COMMIS-
14 SION JURISDICTION.—Any person which directly or indi-
15 rectly controls, is controlled directly or indirectly by, or
16 is directly or indirectly under common control with, any
17 bank or savings association (as such terms are defined in
18 section 3 of the Federal Deposit Insurance Act) and is
19 not itself a bank or savings association shall not be
20 deemed to be a bank or savings association for purposes
21 of any provisions applied by the Federal Trade Commis-
22 sion under the Federal Trade Commission Act.

23 (b) SAVINGS PROVISION.—No provision of this sec-
24 tion shall be construed as restricting the authority of any
25 Federal banking agency (as defined in section 3 of the

1 Federal Deposit Insurance Act) under any Federal bank-
2 ing law, including section 8 of the Federal Deposit Insur-
3 ance Act.

4 (c) HART-SCOTT-RODINO AMENDMENTS.—

5 (1) BANKS.—Section 7A(c)(7) of the Clayton
6 Act (15 U.S.C. 18a(c)(7)) is amended by inserting
7 before the semicolon at the end the following: “, ex-
8 cept that a portion of a transaction is not exempt
9 under this paragraph if such portion of the trans-
10 action (A) is subject to section 4(k) of the Bank
11 Holding Company Act of 1956; and (B) does not re-
12 quire agency approval under section 3 of the Bank
13 Holding Company Act of 1956”.

14 (2) BANK HOLDING COMPANIES.—Section
15 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is
16 amended by inserting before the semicolon at the
17 end the following: “, except that a portion of a
18 transaction is not exempt under this paragraph if
19 such portion of the transaction (A) is subject to sec-
20 tion 4(k) of the Bank Holding Company Act of
21 1956; and (B) does not require agency approval
22 under section 4 of the Bank Holding Company Act
23 of 1956”.

1 **Subtitle E—National Treatment**

2 **SEC. 141. FOREIGN BANKS THAT ARE FINANCIAL HOLDING**
3 **COMPANIES.**

4 Section 8(c) of the International Banking Act of
5 1978 (12 U.S.C. 3106(c)) is amended by adding at the
6 end the following new paragraph:

7 “(3) TERMINATION OF GRANDFATHERED
8 RIGHTS.—

9 “(A) IN GENERAL.—If any foreign bank or
10 foreign company files a declaration under sec-
11 tion 4(l)(1)(C) of the Bank Holding Company
12 Act of 1956, any authority conferred by this
13 subsection on any foreign bank or company to
14 engage in any activity which the Board has de-
15 termined to be permissible for financial holding
16 companies under section 4(k) of such Act shall
17 terminate immediately.

18 “(B) RESTRICTIONS AND REQUIREMENTS
19 AUTHORIZED.—If a foreign bank or company
20 that engages, directly or through an affiliate
21 pursuant to paragraph (1), in an activity which
22 the Board has determined to be permissible for
23 financial holding companies under section 4(k)
24 of the Bank Holding Company Act of 1956 has
25 not filed a declaration with the Board of its sta-

1 tus as a financial holding company under such
2 section by the end of the 2-year period begin-
3 ning on the date of the enactment of the Finan-
4 cial Services Modernization Act of 1999, the
5 Board, giving due regard to the principle of na-
6 tional treatment and equality of competitive op-
7 portunity, may impose such restrictions and re-
8 quirements on the conduct of such activities by
9 such foreign bank or company as are com-
10 parable to those imposed on a financial holding
11 company organized under the laws of the
12 United States, including a requirement to con-
13 duct such activities in compliance with any pru-
14 dential safeguards established under section
15 114 of the Financial Services Modernization
16 Act of 1999.”.

17 **SEC. 142. REPRESENTATIVE OFFICES.**

18 (a) **DEFINITION.**—Section 1(b)(15) of the Inter-
19 national Banking Act of 1978 (12 U.S.C. 3101(15)) is
20 amended by striking “State agency, or subsidiary of a for-
21 eign bank” and inserting “or State agency”.

22 (b) **EXAMINATIONS.**—Section 10(c) of the Inter-
23 national Banking Act of 1978 (12 U.S.C. 3107(c)) is
24 amended by adding at the end the following new sentence:
25 “The Board may also make examinations of any affiliate

1 of a foreign bank conducting business in any State if the
2 Board deems it necessary to determine and enforce com-
3 pliance with this Act, the Bank Holding Company Act of
4 1956 or other applicable Federal banking law.”.

5 **Subtitle F—Direct Activities of**
6 **Banks**

7 **SEC. 151. AUTHORITY OF NATIONAL BANKS TO UNDER-**
8 **WRITE CERTAIN MUNICIPAL BONDS.**

9 The paragraph designated the Seventh of section
10 5136 of the Revised Statutes of the United States (12
11 U.S.C. 24(7)) is amended by adding at the end the fol-
12 lowing new sentence: “In addition to the provisions in this
13 paragraph for dealing in, underwriting, or purchasing se-
14 curities, the limitations and restrictions contained in this
15 paragraph as to dealing in, underwriting, and purchasing
16 investment securities for the national bank’s own account
17 shall not apply to obligations (including limited obligation
18 bonds, revenue bonds, and obligations that satisfy the re-
19 quirements of section 142(b)(1) of the Internal Revenue
20 Code of 1986) issued by or on behalf of any State or polit-
21 ical subdivision of a State, including any municipal cor-
22 porate instrumentality of one or more States, or any pub-
23 lic agency or authority of any State or political subdivision
24 of a State, if the national bank is well capitalized (as de-

1 fined in section 38 of the Federal Deposit Insurance
2 Act).”.